AGENDA HUNTINGTON BEACH PLANNING COMMISSION

TUESDAY, SEPTEMBER 25, 2007

HUNTINGTON BEACH CIVIC CENTER
2000 MAIN STREET
HUNTINGTON BEACH, CALIFORNIA 92648



CHAIR JOHN SCANDURA

VICE-CHAIR TOM LIVENGOOD COMMISSIONER BLAIR FARLEY COMMISSIONER FRED SPEAKER COMMISSIONER JOE SHAW
COMMISSIONER DEVIN DWYER
COMMISSIONER ELIZABETH SHIER-BURNETT

DIRECTOR OF PLANNING, SCOTT HESS, AICP LEGAL COUNSEL, LEONIE MULVIHILL PRINCIPAL PLANNER, HERB FAULAND

THE 7:00 PM PORTION OF THE MEETING IS TELEVISED LIVE ON CABLE TV CHANNEL 3. VIDEO TAPES OF MEETINGS ARE AVAILABLE FOR PUBLIC CHECKOUT AT THE CENTRAL LIBRARY. COPIES OF STAFF REPORTS AND/OR WRITTEN MATERIALS ON EACH AGENDA ITEM ARE ON FILE IN THE PLANNING DEPARTMENT, THE CENTRAL LIBRARY AND ON THE CITY'S WEBSITE (WWW.SURFCITY-HB.ORG) FOR PUBLIC INSPECTION. ANY PERSON HAVING QUESTIONS ON ANY AGENDA ITEM MAY CALL THE PLANNING DEPARTMENT TO MAKE AN INQUIRY CONCERNING THE NATURE OF THE AGENDA ITEM AT (714) 536-5271.

Planning Commission Agenda Information Sheet

The following is a brief explanation of the Planning Commission Agenda Structure:

AGENDA APPROVAL The Planning Commission will announce if any closed public hearing items will be re-opened and may wish to change the order of the items on the agenda.

<u>ORAL COMMUNICATION</u> (FILL OUT REQUEST TO SPEAK FORM) Anyone wishing to address the Planning Commission, only on items not on tonight's agenda, must fill out and mark the appropriate box and submit a form to speak prior to Oral Communication. <u>Please be advised that testimony provided on Public Hearing items during Oral Communications are not part of the permanent entitlement record.</u> The speaking forms are available at the lower entrance to the Council Chambers. Give the form to the Secretary. Staff will call all speakers by name. There is a four-minute time limit per speaker. Time may not be donated to another. All proceedings are recorded. No action can be taken by the Planning Commission on these communications on this date, unless agendized.

Public Hearing ITEMs (FILL OUT REQUEST TO SPEAK FORM) Public hearings allow citizens the opportunity to speak in favor or against specific items. More detailed information on public hearings may be found on the page attached to the back of this agenda. Complete the form by marking the appropriate box and indicating the hearing item you wish to provide testimony on. Please note if the public hearing items have been closed or are still open for testimony. The agenda and staff report will indicate if the public hearing is open or closed. The Planning Commission at their discretion may re-open a closed public hearing and the Commission will make the announcement during Agenda Approval. The speaking forms are available at the lower entrance to the Council Chambers. Give the form to the Secretary. Staff will call all speakers by name. There is a four-minute time limit per speaker. Individuals may choose to donate their 4 minutes of time to another speaker, and the maximum time donation limit is 8 minutes (2 individuals), for a total of 12 minutes per speaker. Individuals who donate time must be present when the item is being discussed. All proceedings are recorded. If you have documents to distribute, there should be enough copies for all Planning Commissioners, staff, and the public. The documents become part of the public record and will not be returned.

<u>CONSENT CALENDAR</u> Consent Calendar items are considered routine items that normally do not require separate consideration. The Planning Commission may make one motion for approval of all items listed under the CONSENT CALENDAR.

<u>Non-Public Hearing Items</u> These items are considered by the Planning Commission separately and require separate motions. These transactions are considered administerial and public testimony is not heard.

<u>PLANNING COMMISSION ITEMS / INQUIRIES</u> Items of business or concern are presented by Planning Commissioners and discussed with staff. Informational updates and reports are made by Commissioners who serve as liaisons to various committees.

<u>PLANNING ITEMS</u> Updates and reports from the Planning Director for the information of the Planning Commission and the public.

<u>Adjournment</u>



AGENDA

HUNTINGTON BEACH PLANNING COMMISSION

TUESDAY, SEPTEMBER 25, 2007 HUNTINGTON BEACH CIVIC CENTER 2000 Main Street, Huntington Beach, California 92648

5:45 P.M. - ROOM B-8 (CITY HALL LOWER LEVEL)

CALL PLANNING COMMISSION MEETING TO ORDER

ROLL CALL: Shier-Burnett, Speaker, Livengood, Scandura, Shaw, Dwyer, Farley AGENDA APPROVAL

- A. <u>PROJECT REVIEW (FUTURE AGENDA ITEMS)</u> NONE
- B. STUDY SESSION ITEMS
 - B-1. OCTA Measure "M" Presentation Mary Beth Broeren
 - B-2. Future Study Session Items Chair Scandura
- C. AGENDA REVIEW (UPDATE ON ALL AGENDA ITEMS) Herb Fauland
- D. PLANNING COMMISSION COMMITTEE REPORTS
- E. <u>PUBLIC COMMENTS</u> Regarding Project Review and Study Session portions of Meeting

Anyone wishing to speak on Project Review or Study Session items during PUBLIC COMMENTS may do so by filling out a Request To Speak form and giving it to the Secretary. (4 MINUTES PER PERSON, NO DONATING OF TIME TO OTHERS)

F. PLANNING COMMISSION COMMENTS

6:30 P.M. - RECESS FOR DINNER

07aq0925 3

7:00 P.M. - COUNCIL CHAMBERS

CALL PLANNING COMMISSION MEETING TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL: Shier-Burnett, Speaker, Livengood, Scandura, Shaw, Dwyer, Farley

AGENDA APPROVAL

A. ORAL COMMUNICATIONS

Anyone wishing to speak during ORAL COMMUNICATIONS must fill out and submit a form to speak. The Planning Commission can take no action on this date, unless the item is agendized. Any one wishing to speak on items not on tonight's agenda, a closed public hearing item, or on non-public hearing items may do so during ORAL COMMUNICATIONS. Please note comments on closed public hearing items will not be part of the permanent entitlement record. Speakers on items scheduled for PUBLIC HEARING will be invited to speak during the public hearing. (4 MINUTES PER PERSON, NO DONATING OF TIME TO OTHERS)

B. PUBLIC HEARING ITEMS:

Anyone wishing to speak during an open PUBLIC HEARING must fill out and submit a form to speak. The public may address the Planning Commission only during the open PUBLIC HEARING items or during ORAL COMMUNICATIONS. Please review the agenda to determine whether the PUBLIC HEARING item is open or closed. If the PUBLIC HEARING on an item is closed, you will not be permitted to speak during that portion of the agenda and may wish to address your concerns during the ORAL COMMUNICATIONS portion of the agenda. Speakers on items scheduled for PUBLIC HEARING will be invited to speak during the public hearing. (4 MINUTES PER PERSON, WITH A MAXIMUM TIME DONATION OF 8 MINUTES, FOR A TOTAL OF 12 MINUTES PER SPEAKER)

<u>PROCEDURE:</u> Commission Disclosure Statement(s), Staff Report Presentation, Commission Questions, Public Hearing, Discussion/Action.

B-1. ZONING TEXT AMENDMENT NO. 07-003 (MEDICAL MARIJUANA DISPENSARIES - CONTINUED FROM SEPTEMBER 11, 2007 WITH PUBLIC HEARING CLOSED) Applicant: City of Huntington Beach Request: To amend Chapters 204 and 212 of the Huntington Beach Zoning and Subdivision Ordinance to delete all references to medical marijuana dispensaries. Location: Industrial Districts Citywide Project Planner: Ricky Ramos

- C. <u>CONSENT CALENDAR</u> NONE
- D. <u>NON-PUBLIC HEARING ITEMS</u> NONE
- E. PLANNING ITEMS
 - E-1. CITY COUNCIL ACTIONS FROM PREVIOUS MEETING
 - E-2. CITY COUNCIL ITEMS FOR NEXT MEETING
 - E-3. PLANNING COMMISSION ITEMS FOR NEXT MEETING
- F. PLANNING COMMISSION ITEMS
 - F-1. PLANNING COMMISSION REQUEST ITEMS NONE
 - F-2. PLANNING COMMISSION COMMENTS

Commissioner Shier-Burnett -

Commissioner Speaker -

Vice Chairperson Livengood -

Chairperson Scandura -

Commissioner Shaw -

Commissioner Dwyer -

Commissioner Farley -

ADJOURNMENT: Adjourn to the next regularly scheduled meeting of October 9, 2007.

Under the provisions of the Huntington Beach Zoning and Subdivision Ordinance, the action taken by the Planning Commission is final unless an appeal is filed to the City Clerk by you or by an interested party. Said appeal must be in writing and must set forth in detail the action and grounds by which the applicant or interested party deems himself aggrieved. Said appeal must be accompanied by a filing fee of One Thousand Five Hundred Forty-One Dollars (\$1,541.00) if the appeal is filed by a single family dwelling property owner appealing the decision on his own property or Two Thousand Three Hundred Seventy-Nine Dollars (\$2,379.00) if the appeal is filed by any other party. The appeal shall be submitted to the City Clerk within ten (10) calendar days of the date of the Planning Commission's action.

Copies of staff reports and/or written materials on each agenda item are on file in the Planning Department, for inspection by the public. A copy of the agenda packet is also available at the Central Library (7111 Talbert Avenue).

DVD'S OF MEETINGS ARE AVAILABLE FOR PUBLIC CHECK OUT AT THE CENTRAL LIBRARY, AND FOR DUPLICATION SERVICES IN THE CITY CLERK'S OFFICE.

HUNTINGTON BEACH PLANNING COMMISSION Public Hearing Procedures

This statement has been prepared to provide a better understanding of the procedures for public hearings before the Planning Commission.

Regular meetings of the Planning Commission are held on the second and fourth Tuesdays of each month beginning at 5:15 p.m. in Room B-8 for a study session and then at 7:00 PM in the Council Chambers. Adjourned meetings, special meetings, and Study Sessions may be scheduled at other times.

Planning Commission proceedings are governed by the Planning Commission By-Laws, Robert's Rules of Order and the Brown Act. The following is the typical sequence of events on public hearing items:

- A. The Chairperson shall announce the item and if the public hearing is open or closed.
- B. The Planning Commission shall disclose any discussions, conversations, etc., with applicants, applicant's representatives or property owners.
- C. The staff report is presented.
- D. Questions by the Planning Commission concerning the staff report may be answered at this time.
- E. The public hearing is opened by the Chairperson.
- F. The <u>applicant</u> or <u>appellant</u> is given an opportunity to address the Commission. Time is not limited but left to the Chairperson's discretion.
- G. <u>Public Comments</u>: Staff will call all speakers by name. Please proceed to the podium. Individuals favoring and opposing the proposal are given an opportunity to address the Commission (up to four (4) minutes), or may choose to donate their time to another speaker if the "Request to Speak" form is filled out and given to the Secretary. A speaker who addresses the Commission on behalf of individuals who donate time are allowed a maximum of 12 minutes. Individuals who donate time must be present when the item is being discussed. Please state your name before addressing the Commission.
- H. The Commission may ask questions of speakers addressing the Commission.
- I. The public hearing is closed.
- J. The Commission will deliberate the matter at this time.
- K. The Commission then acts on the matter by continuing, approving, conditionally approving, or denying the petition.

The Planning Commission receives a staff report packet on the Tuesday preceding the meeting, allowing time to review each case and make further investigations in the field prior to the scheduled meeting.

Staff reports are available in the Planning Department, the Central Library and on the City's website (www.surfcity-hb.org) anytime on Wednesday preceding the Tuesday Planning Commission meeting.



City of Huntington Beach Planning Department

STAFF REPORT

TO:

Planning Commission

FROM:

Scott Hess, AICP, Director of Planning

BY:

Ricky Ramos, Associate Planner

DATE:

September 25, 2007

SUBJECT:

ZONING TEXT AMENDMENT NO. 07-003 (MEDICAL MARIJUANA

DISPENSARIES - Continued from September 11, 2007 with the public hearing

closed)

APPLICANT: City of Huntington Beach, 2000 Main St, Huntington Beach, CA 92648

LOCATION: Industrial Districts Citywide

STATEMENT OF ISSUE:

Zoning Text Amendment No. 07-003 request:

Amend Chapters 204 and 212 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) to delete all references to medical marijuana dispensaries.

Continued Item:

- On August 14, 2007 the Planning Commission continued this item to September 11, 2007 and requested additional information.
- On August 28, 2007 the Planning Commission held a Study Session to review the additional information requested.
- On September 11, 2007 the Planning Commission continued this item to September 25, 2007.
- Original August 14, 2007 staff report which includes a project description, analysis, and staff recommendation is provided as an attachment to this report.

Staff's Recommendation:

Approve Zoning Text Amendment No. 07-003 based upon the following:

- Zoning Text Amendment will make the HBZSO consistent with federal law, which considers medical marijuana dispensaries illegal.
- Approval of the request will not affect land use compatibility and will not change the development standards in the IG and IL zoning districts.

RECOMMENDATION:

Motion to:

"Approve Zoning Text Amendment No. 07-003 with findings (Attachment No. 1 to the Planning Commission staff report dated August 14, 2007) and forward to the City Council for adoption."

ALTERNATIVE ACTION(S):

The Planning Commission may take alternative actions such as:

- A. "Deny Zoning Text Amendment No. 07-003 with findings for denial."
- B. "Continue Zoning Text Amendment No. 07-003 and direct staff accordingly."

ATTACHMENTS:

- 1. Letters in Opposition and/or Support
- 2. Planning Commission Staff Report dated August 14, 2007

SH:MBB:RR:lw

From:

Flynn, Joan

Sent:

Monday, August 13, 2007 9:10 PM

To:

Ross, Rebecca

Subject:

Fw: dispensaries

Joan L. Flynn, CMC Huntington Beach City Clerk

---- Original Message ----

From: jwatson51@cox.net <jwatson51@cox.net>

To: Flynn, Joan

Sent: Mon Aug 13 18:38:21 2007

Subject: dispensaries

dear joan ,

i'm just one more patient who does not want to go back to obtaining medicine from the street . i'd rather feel safe and have my tax dollars do some good . in fact smoking pot will never go away and since the bottom line politically in this wonderful nation is money ,it's just a matter of time before those billions of dollars in tax revenue will finally get noticed and politicians who are even against it will cave and begin touting the overwhelming evidence that it is medicine that is helpful . wouldn't it be great if more people did things for the right reason rather than the popular reason . thanks for reading this . j wayne watson age 59

From:

Flynn, Joan

Sent:

Monday, August 13, 2007 9:08 PM

To:

Ross, Rebecca

Subject:

Fw: Marijuana dispensaries

Joan L. Flynn, CMC Huntington Beach City Clerk

---- Original Message ----

From: Ronald Steven Mintz <taclawcom@sbcglobal.net>

To: Flynn, Joan

Sent: Mon Aug 13 18:39:31 2007 Subject: Marijuana dispensaries

It will be interesting to observe the promulgation of marijuana dispensaries within your jurisdiction and compare the same with the Prohibition-era phenomena.

Ronald Steven Mintz, Esq. General Counsel TACTICAL LAW COMMAND (Not a Govt. Agency)

From:

Flynn, Joan

Sent:

Monday, August 13, 2007 9:09 PM

To:

Ross, Rebecca

Subject:

Fw: Medical Marijuana Dispensaries

Joan L. Flynn, CMC Huntington Beach City Clerk

---- Original Message ----

From: susiland@aol.com <susiland@aol.com>

To: Flynn, Joan

Sent: Mon Aug 13 18:47:22 2007

Subject: Medical Marijuana Dispensaries

City Clerk:

Please count me among the many constituents in Huntington Beach who favor allowing the lawful dispensation of medical marijuana. I'll be watching the vote, to see who supports this issue and who is being an old stick-in-the-mud.

Susan

AOL now offers free email to everyone. Find out more about what's free from AOL at AOL.com.

From:

Flynn, Joan

Sent:

Monday, August 13, 2007 9:09 PM

To:

Ross, Rebecca

Subject:

Fw: Please Regulate, Do Not Ban Medical Marijuana Co-Ops

Joan L. Flynn, CMC Huntington Beach City Clerk

---- Original Message ----

From: Geogeogeo215@aol.com <Geogeogeo215@aol.com>

To: Fikes, Cathy; Flynn, Joan

Cc: Geogeogeo215@aol.com <Geogeogeo215@aol.com>

Sent: Mon Aug 13 19:34:15 2007

Subject: Please Regulate, Do Not Ban Medical Marijuana Co-Ops

Dear Huntington Beach City Council Members and Joan Flynn,

I moved to Huntington Beach in 1982, paid taxes, and voted every year since then.

As a long term resident, I hereby request that you regulate but not ban medical marijuana cooperatives. These establishments provide a public service and are supported by the voters who pay your salaries.

Thank you for your consideration,

Get a sneak peek of the all-new AOL at http://discover.aol.com/memed/aolcom30tour

From:

Flynn, Joan

Sent:

Monday, August 13, 2007 9:10 PM

To:

Ross, Rebecca

Subject:

Fw: medical pot dispensaries

Joan L. Flynn, CMC Huntington Beach City Clerk

---- Original Message -----

From: David <dwjames@socal.rr.com>

To: Flynn, Joan

Sent: Mon Aug 13 20:29:31 2007 Subject: medical pot dispensaries

Dear City Clerk Flynn:

I urge you as a long term resident of Huntington Beach to support the establishment of medical pot dispensaries in Huntington Beach. I know many medical cannabis patients and the depiction of these people by the federal authorities as drug dealers I find absolutely disgusting. My wife has found medical cannabis very helpful in overcoming the extreme pain caused by her experience with flesh eating bacteria and a more recent amputation of her lower left leg. If she were to rely on the prescription drug she had available she would be a zombie today.

Instead she has formed a support group for people affected by the disease and is currently helping the 600 people (average group count) in dealing with the challenges posed by the disease.

I urge you to look at the scientific evidence of the many beneficial uses of medical cannabis.

David W James

From: WBritt420@aol.com

Sent: Tuesday, August 14, 2007 11:13 AM

To: Flynn, Joan **Cc:** Fikes, Cathy

Subject: Letter to the City Council regarding the Med Pot Dispensaries Public Hearing

Dear City Council Members:

As an advocate for the disabled and a qualified medical cannabis patient I ask that you consider the following before you make a decision about banning medical cannabis in Huntington Beach:

10 years ago the people voted for Prop. 215 which RECOMMENDED that the state set up a safe and affordable distribution system. No such system has been set up.

The US Constitution tells us that if the government refuses to enact law put in place by the people of the US, it is the duty of US citizens to enact those laws.

The California Constitution Article 3 Section 3.5*, tells us that when state and federal law conflict, state officials must follow state law regardless of federal law.

The California Supreme Court ruled in People Vs Mower that Medical Cannabis should be treated like any other medicine or medical procedure.

Patients are suffering in Huntington Beach and need safe access to their medicine. Without safe access they must buy their medicine from criminals on the street.

Tremendous amounts of money is being wasted prosecuting qualified patients in HB. This money could be spent elsewhere on more pressing and important matters.

It may be a controversial issue, but patients are suffering needlessly and need your help. Please consider those in pain as you make your decision.

Thank you,

William Britt, Exec. Dir, Association of Patient Advocates

*California Constitution Article 3 Section 3.5

An administrative agency, including an administrative agency created by the Constitution or an initiative statute, has no power:

- (a) To declare a statute unenforceable, or refuse to enforce a statute, on the basis of it being unconstitutional unless an appellate court has made a determination that such statute is unconstitutional;
- (b) To declare a statute unconstitutional;
- (c) To declare a statute unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations prohibit the enforcement of such statute unless an appellate court has made a determination that the enforcement of such statute is prohibited by federal law or federal regulations. (1)

ATTACHMENT NO. + Ce

According to 1979 Attorney General George Deukmejian's Analysis: "In common parlance, the term 'administrative' pertains to the executive branch of government. In its stricter connotation, an 'administrative agency' is a governmental body, other than a court or legislature, invested with power to prescribe rules or regulations or to adjudicate private rights and obligations."(2)

Since no appellate court has declared enforcement of HS 11362.5 either unconstitutional or prohibited by federal law,(3) no California state agency may refuse to enforce HS 11362.5 on the basis that federal law prohibits actions protected under the California statute.

- 1. 1. Constitution of California, Art.3 Section 3.5.
- 2. 2. Attorney General Opinions, 62 Ops Atty Gen 788 (Provisions of Cal. const. art. III, ¤ 3.5 apply to the Alcoholic Beverage Control appeals Board in the exercise of its authority under Cal. Const., art. XX, section 22, and Bus. & Prof. code. sections 23080 through 23087).
- 3. See U.S. v Oakland Cannabis Buyers Cooperative, U.S. Supreme Court, No. 00151, May 14, 2001, Concurring Opinion, at the first paragraph; footnote 1; and the fifth paragraph, which reads in part: "...By passing Proposition 215, California voters have decided that seriously ill patients and their primary caregivers should be exempt from prosecution under state laws for cultivating and possessing marijuana if the patients physician recommends using the drug for treatment. This case does not call upon the Court to deprive all such patients of the benefit of the necessity defense to federal prosecution, when the case itself does not involve any such patients."

Get a sneak peek of the all-new AOL.com.

From: Ernst Ghermann [EGhermann@dslExtreme.com]

Sent: Tuesday, August 14, 2007 3:00 PM

To: Flynn, Joan

Subject: Med Pot Dispensaries

To Joan Flyn

City Clerk, Huntington Beach

Re: Med Pot Dispensaries public hearing.

I currently live in the San Fernando Valley, but I am planning to move to the Huntington Landmark senior community next year. While currently healthy at age 72, I can foresee the possibility of future health issues that might be alleviated with marijuana dispensation. Consequently I urge you not to deny ill people access to this potentially pain relieving medication. Ernst Ghermann

From: Bruce Cohen [brucedcohen2002@yahoo.com]

Sent: Thursday, August 09, 2007 11:50 PM

To: Flynn, Joan Cc: Fikes, Cathy

Subject: Dear City Council and Clerk...

Norm Westwell is at it again.

He just broadcast an email letter accross the state of California, asking people to flood you in support of the Medical Marijuana Dispensaries.

While I am in favor of said dispensaries, I am also in favor of honesty and accuracy.

I suggest you require all email in support to have the name and address (and city!) of those writing for the email to be considered.

Yours,

Bruce Cohen www.GetBruce.com

Norm <normw@modernpublic.com> wrote:

To: ca-liberty@yahoogroups.com

From: "Norm" <normw@modernpublic.com>

Date: Fri, 10 Aug 2007 05:05:19 -0000

Subject: [ca-liberty] The Huntington Beach Planning Commission will be holding

The Huntington Beach Planning Commission will be holding Holding a public hearing on 8/14/07 at 7pm on the issue of

Banning medical marijuana dispensaries in HB.

This could go either way.

Your email could make the difference.

HB does not ask for and does not require your address. The more communications they receive the better.

Here is where to send them:

To be included in the public record your email should be sent to Joan Flynn the city Clerk whose address is:

Visit Your Group

SPONSORED LINKS

Libertarian

Libertarian party

Yahoo! News Odd News You won't believe it, but it's true

Yahoo! TV

ATTACHMENT NO.

jflynn@surfcity-hb.org Address this letter to the City Clerk regarding the Med Pot Dispensaries public hearing.

In addition it should also be sent to the HB City Council Email to this address will be re-directed to all 7 Huntington Beach Council Members: cfikes@surfcity-hb.org Address this letter to: Dear City Council Members.

P.S. Providing your address is unnecessary and only serves to identify out of town senders.

It is recommended to NOT include your address information. It IS recommended to flood the city clerk with emails in favor of your position.

Messages in this topic (1)

Reply (via web post) | Start a new topic

Messages | Links | Database | Polls | Calendar

YAHOO! GROUPS

<u>Change settings via the Web</u> (Yahoo! ID required)
Change settings via email: <u>Switch delivery to Daily Digest</u> | <u>Switch format to Traditional Visit Your Group</u> | <u>Yahoo!</u> <u>Groups Terms of Use</u> | <u>Unsubscribe</u>

Be a better Globetrotter. <u>Get better travel answers</u> from someone who knows. Yahoo! Answers - Check it out.

Love TV? Listings, picks news and gossip.

Endurance Zone on Yahoo! Groups Groups about better endurance.

From:

Flynn, Joan

Sent:

Monday, August 13, 2007 7:50 AM

To:

Ross, Rebecca

Subject:

Fw: Please do not ban medical cannabis dispensaries in Huntington Beach!

Joan L. Flynn, CMC Huntington Beach City Clerk

---- Original Message -----

From: Starchild <sfdreamer@earthlink.net>

To: Flynn, Joan

Cc: Starchild <RealReform@earthlink.net>

Sent: Fri Aug 10 20:27:34 2007

Subject: Please do not ban medical cannabis dispensaries in Huntington Beach!

Make no mistake about it, restricting the ability to operate medical cannabis dispensaries is tantamount to supporting the "War on Drugs." And if you don't yet understand how that war has been a total failure, please consider the following info just on the "War on Marijuana":

BAD NEWS

by James W. Harris

FBI: Marijuana Arrests Reach Shameful New Record

The War Against Marijuana is at all-time high.

Police arrested an estimated 771,608 persons for marijuana violations in 2004, according to the FBI's annual Uniform Crime Report, released October 17.

That total is the highest ever recorded -- a shameful new record.

And a closer look at this figure reveals some startling facts about the Drug War.

- * There is, on average, one marijuana arrest every 41 seconds.
- * Since 1993, marijuana arrests have more than doubled.
- * The number of marijuana arrests far exceeded the total number of arrests in the U.S. for *all violent crimes combined*, including murder, manslaughter, forcible rape, robbery and aggravated assault.
- * Marijuana arrests account for 44.2 percent of all drug arrests in the United States. (Clearly, the War on Drugs is first and foremost a war on casual marijuana use.)
- * Of those arrested, 89 percent -- some 684,319 Americans -- were charged with * possession only * .
- * The remaining 11 percent were charged with "sale/manufacture," a category that includes *all* cultivation offenses -- even those where the marijuana was being grown for personal or medical use.
- * Over 8 million Americans have been arrested on marijuana charges in the past decade -- a far greater number than the entire populations of Alaska, Delaware, the District of Columbia, Montana, North Dakota, South Dakota, Vermont, and Wyoming... combined.
- "It's important to remember that each of these statistics represents a human being, and in many cases, a preventable tragedy," said Aaron Houston, director of government relations for the Marijuana Policy Project in Washington, D.C. "One of those marijuana arrests in 2004 was Jonathan Magbie, a quadriplegic medical marijuana patient who died in the Washington, D.C., city jail while serving a 10-day sentence for marijuana possession."

"These numbers belie the myth that police do not target and arrest minor marijuana offenders," said Allen St. Pierre, Executive Director of NORML. "This effort is a tremendous waste of criminal justice resources that diverts law enforcement personnel away from focusing on serious and violent crime, including the war on terrorism."

Sources: Marijuana Policy Project: http://www.mpp.org/releases/nr20051017.html NORML:

http://www.mapinc.org/norml/v05/n1649/a01.htm?134

Please don't cater to a few NIMBYs. "Planning" should not mean "banning," and the Planning Commission should not become a vehicle for tyranny by the majority or by an aggressive NIMBY minority.

Sincerely,
<<< starchild >>>

P.S. - Please include my comments in the public record -- thank you!

From:

Flynn, Joan

Sent:

Monday, August 13, 2007 7:49 AM

To:

Ross, Rebecca

Subject:

Fw: More Heads up: Norm 'Worm' Westwell is at it again...

Joan L. Flynn, CMC

Huntington Beach City Clerk

---- Original Message -----

From: Bruce Cohen <brucedcohen2002@yahoo.com>

To: Flynn, Joan

Sent: Sat Aug 11 13:49:37 2007

Subject: More Heads up: Norm 'Worm' Westwell is at it again...

Norm sent this email to at least 6 discussion groups, that I know of. I'm sure there were more.

Note the comment at the bottom.

I'm forwarding this one to you to show how he's soliciting mail from folks for sure out of the area.

(Libertarian Party of Los Angeles County = LPLAC)

I wrote an article about this last time he did it, regarding the Poseiden water project.

It was entitled 'Cheaters Never Prosper'.

It's still available on the Internet:

http://libertarianactivism.com/writings/libertarian-morality.shtml

Feel free to call.

I can also speak at your meetings...

Thank you,

Bruce Cohen 949 813-8001

Norm <normw@modernpublic.com> wrote:

To: LPLAC@yahoogroups.com

From: "Norm" <normw@modernpublic.com>
Date: Fri, 10 Aug 2007 05:09:05 -0000

Subject: [LPLAC] Action Alert: HB to consider banning med pot dispensaries

The Huntington Beach Planning Commission will be holding a public hearing on 8/14/07 at 7pm on the issue of Banning medical marijuana dispensaries in HB.

This could go either way.

Your email could make the difference.

HB does not ask for and does not require your address. The more communications they receive the better.

Here is where to send them:

To be included in the public record your email should be sent to Joan Flynn the city Clerk whose address is: jflynn@surfcity-hb.org <mailto:jflynn%40surfcity-hb.org> Address this letter to the City Clerk regarding the Med Pot Dispensaries public hearing.

In addition it should also be sent to the HB City Council Email to this address will be re-directed to all 7 Huntington Beach Council Members: cfikes@surfcity-hb.org <mailto:cfikes%40surfcity-hb.org> Address this letter to: Dear City Council Members.

 ${\mbox{P.S.}}$ Providing your address is unnecessary and only serves to identify out of town senders.

It is recommended to NOT include your address information.

It IS recommended to flood the city clerk with emails in favor of your position.

Messages in this topic message in this topic http://groups.yahoo.com/group/LPLAC/message/1488;
_ylc=X3oDMTM1Yz12YTUzBF9TAzk3MzU5NzE0BGdycE1kAzExOTIyNjA3BGdycHNwSWQDMTcwNTQ0NDYwNwRtc2dJZAMxNDg4BHN1YwNmdHIEc2xrA3Z0cGMEc3RpbWUDMTE4NjgwMjQzNAR0cGNJZAMxNDg4> (1) Reply (via web post) http://groups.yahoo.com/group/LPLAC/post;

_ylc=X3oDMTJxZDM3Ymg4BF9TAzk3MzU5NzE0BGdycElkAzExOTIyNjA3BGdycHNwSWQDMTcwNTQ0NDYwNwRtc2dJZAMxNDg4BHNlYwNmdHIEc2xrA3JwbHkEc3RpbWUDMTE4NjgwMjQzNA--?act=reply&messageNum=1488> | Start a new topic http://groups.yahoo.com/group/LPLAC/post;

_ylc=X3oDMTJmdXBhOW5jBF9TAzk3MzU5NzE0BGdycE1kAzExOTIyNjA3BGdycHNwSWQDMTcwNTQ0NDYwNwRzZWMDZnRyBHNsawNudHBjBHN0aW11AzExODY4MDI0MzQ->

Messages <http://groups.yahoo.com/group/LPLAC/messages;</pre>

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<http://groups.yahoo.com/group/LPLAC/links;</pre>

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<http://groups.yahoo.com/group/LPLAC/calendar;</pre>

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=Los+angeles+county+traffic+schools&w4=Los+angeles+county+appraiser&w5 =Los+angeles+county+property+appraiser&c=5&s=187&q=2&.sig=mG2IqiPzi3mUXLZ0fhh8Uq> Los angeles county traffic schools http://groups.yahoo.com/gads;; ylc=X3oDMTJkN21kZDl1BF9TAzk3MzU5NzE0BF9wAzMEZ3JwSWQDMTE5MjI2MDcEZ3Jwc3BJZAMxNzA1NDQ0NjA3B HNlYwNzbG1vZARzdG1tZQMxMTg2ODAyNDM0?t=ms&k=Los+angeles+county+traffic+schools&w1 =Los+angeles+county+bail+bond&w2=Los+angeles+county+real+estate&w3 =Los+angeles+county+traffic+schools&w4=Los+angeles+county+appraiser&w5 =Los+angeles+county+property+appraiser&c=5&s=187&g=2&.sig=n-60Yri0YhyXtVB16BkCkw> Los angeles county appraiser http://groups.yahoo.com/gads; ylc=X3oDMTJkYTYxM25tBF9TAzk3MzU5NzE0BF9wAzQEZ3JwSWQDMTE5MjI2MDcEZ3Jwc3BJZAMxNzA1NDQ0NjA3B =Los+angeles+county+bail+bond&w2=Los+angeles+county+real+estate&w3 =Los+angeles+county+traffic+schools&w4=Los+angeles+county+appraiser&w5 =Los+angeles+county+property+appraiser&c=5&s=187&q=2&.siq=bFqfJ7VT3HqjMLhlvNZhVO> Los angeles county property appraiser http://groups.yahoo.com/gads; ylc=X3oDMTJkb2x2am9nBF9TAzk3MzU5NzE0BF9wAzUEZ3JwSWQDMTE5MjI2MDcEZ3Jwc3BJZAMxNzA1NDQ0NjA3B =Los+angeles+county+bail+bond&w2=Los+angeles+county+real+estate&w3 =Los+angeles+county+traffic+schools&w4=Los+angeles+county+appraiser&w5 =Los+angeles+county+property+appraiser&c=5&s=187&g=2&.sig=398 xofKTmnbEWGPbQ tZg> Yahoo! News Fashion News What's the word on fashion and style? Search Ads Get new customers. http://us.ard.yahoo.com/SIG=12j7noc60/M= 493064.10729656.113333347.8674578/D=groups/S=1705444607:NC/Y=YAHOO/EXP=1186809634/A= 3848641/R=0/SIG=1312g85fq/*http://searchmarketing.yahoo.com/arp/srchv2.php?o=US2003 &cmp=Yahoo&ctv=Groups2&s=Y&s2=&s3=&b=50> List vour web site in Yahoo! Search. Food Lovers Real Food Group http://us.ard.yahoo.com/SIG=12j8ri7s8/M= 493064.11036139.11614791.8674578/D=groups/S=1705444607:NC/Y=YAHOO/EXP=1186809634/A= 4763757/R=0/SIG=1192rfjiu/*http://groups.yahoo.com/group/realfood/> on Yahoo! Groups find out more. <http://geo.yahoo.com/serv?s=97359714/grpId=11922607/grpspId=1705444607/msgId=</pre> 1488/stime=1186802434/nc1=3848621/nc2=3848641/nc3=4763757>

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From:

Flynn, Joan

Sent:

Monday, August 13, 2007 7:49 AM

To:

Ross, Rebecca

Subject:

Fw: mmj

Joan L. Flynn, CMC Huntington Beach City Clerk

---- Original Message -----

From: Dominated4Life@aol.com <Dominated4Life@aol.com>

To: Flynn, Joan

Sent: Sat Aug 11 19:30:41 2007

Subject: mmj

Please do not close down medical marijuana dispensaries in HB.

Patients, not criminals.

- Zach Risner (614) 374-5792

Get a sneak peek of the all-new AOL at http://discover.aol.com/memed/aolcom30tour

From:

Flynn, Joan

Sent:

Monday, August 13, 2007 7:49 AM

To:

Ross, Rebecca

Subject:

Fw: Dear City Council Members

Joan L. Flynn, CMC Huntington Beach City Clerk

---- Original Message -----

From: R Givens <rlgivens@comcast.net>

To: Flynn, Joan

Sent: Mon Aug 13 02:45:31 2007 Subject: Dear City Council Members

NO MORE REEFER MADNESS

Dear City Council Members,

Before banning medical marijuana dispensaries consider the basis for marijuana prohibition-

"Marihuana influences Negroes to look at white people in the eye, step on white men's shadows and look at a white woman twice." (Hearst newspapers nationwide, 1934)

"There are 100,000 total marijuana smokers in the U.S., and most are Negroes, Hispanics, Filipinos and entertainers. Their Satanic music, jazz and swing, result from marijuana use. This marijuana can cause white women to seek sexual relations with Negroes, entertainers and any others."

"The primary reason to outlaw marijuana is its effect on the degenerate races."

"Marijuana is an addictive drug which produces in its users insanity, criminality and death."

"Marijuana is the most violence-causing drug in the history of mankind."

"[Smoking] one [marihuana] cigarette might develop a homicidal mania, probably to kill his brother." (see US Government Propaganda To Outlaw Marijuana - http://www.druglibrary.org/schaffer/hemp/taxact/t3.htm)

Why on earth would any same person align themselves with such nonsense.

Particularly when the victims of a ban are the sick and dying. Preventing people from getting medical treatment was a Nazi tactic. Don't join the anti-human DEA crusade against seriously ill people.
Ralph Givens

From:

Craig Johnson [thinkcj@hotmail.com]

Sent:

Monday, August 13, 2007 1:56 PM

To:

Flynn, Joan

Subject: mmj dispensarys

To whom it may concern.

Prop. 215 and S.B. 420 is set up to encourage local civic leaders to establish safe-access for mmj patients in their community's.

Dispensarys serve that need, what alternative has your city proposed?

Vote No on the moratorium and set up regulations to allow mmj disp.

Thank you

Craig Johnson

Booking a flight? Know when to buy with airfare predictions on MSN Travel.

From: b1joy2c@yahoo.com

Sent: Monday, August 13, 2007 1:58 PM

To: Flynn, Joan

Subject: Compassionate Care

pharmacies should stay open and serve the community. Making ill people drive out of the area makes no sense. Please serve compassion on your plate of offerings.

Joy L

Miles of Smiles!

From:

Norman [njl433@yahoo.com]

Sent:

Monday, August 13, 2007 2:21 PM

To:

Flynn, Joan

Subject:

No Ban of Medical Cannabis Dispensaries!!!!

I am a citizen of Huntington Beach and California.

Medical Cannabis is legal in California. We the people voted for this.

You represent the people of Huntington Beach.

Please allow us to get our medication which is consistent with the laws of our state which you were elected to uphold.

Thank you,

Norman Lepoff

Ramos, Ricky

From: Lugar, Robin

Sent: Wednesday, August 15, 2007 3:02 PM

To: Fikes, Cathy; Ramos, Ricky **Subject:** FW: about last nights meeting

For distribution to Council and Planning Commission.

----Original Message----

From: Marla James [mailto:ghostlady@socal.rr.com]

Sent: Wednesday, August 15, 2007 11:59 AM

To: city.clerk@surfcity-hb.org Subject: about last nights meeting

Please CC to all commissioners:

I would like to applaud your team for the decision you made last night on medical marijuana to get more information. I am a medical marijuana patient and currently have to get my medicine underground. I am an amputee in a wheelchair (I had flesh eating bacteria) and use it for pain management instead of being on oxycontin the rest of my life. I am a 46 year old Huntington Beach resident (92649). A dispensary in our city would make me feel safe getting my medicine. It would also bring a lot of money into our city as we, as patients are happy to pay taxes on our medicine.

I would like to show you via a website from the city of Oakland, (a city with four dispensaries running legally). The money from dispensaries could help with the funding to repair our infrastructure.

here is a report from the Oakland City Manager's Office on the operation of their dispensaries:

http://clerkwebsvrl.oaklandnet.com/attachments/15637.pdf

Their findings were 100% positive, here are some excerpts:

"Oakland's four (4) permitted cannabis dispensaries employ a total of ninety-nine (99) people. An increase in the number of permitted dispensaries would increase employment."

"According to the Business Tax Certification office, the dispensaries reported, and paid tax on, gross receipts of \$5,461,824.14 for the 2005 calendar year. Although data on individual businesses is not available to staff, this amount was presumably reported by only the two dispensaries that operated the entire year. The previous year, when four dispensaries were in operation, gross receipts reported were \$16,422,722.05. Four dispensaries are again in operation, and it is likely that, by 2007, there will be a substantial increase in taxes paid to the City."

"Oakland's permitted dispensaries continue to function without excessive drain on police resources. Three of the four dispensaries provide additional social services to their patients and the surrounding community."

I am a member of Orange County NORML (national oraganization to reform marijuana laws) and ASA (Americans for Safe Access).

If you need copies of prop 215 or SB420 I would be happy to send those to you too. You mentioned the DEA and property forfeiture last night, I work with the people in LA and please know that people who own dispensaries know this could be a risk. Many own their own buildings. Even though the letters went out to 100 landlords of the over 300 dispensaries in Los Angeles. None have lost property.

Most people who own dispensaries do so by the rules. They verify that a patient is real with a known doctor. Remember a dispensary is like a pharmacy. They do not diagnose or question a doctor, they just fill a recommendation. The owners of the dispensary is considered a caregiver per SB420. Some dispensaries have patient activities and social services too.

Just to let you know below is a list of doctors who will recommend medical marijuana.

These doctors are MDs and do require medical records.

My doctors are Dr Sullivan and Doctor Gitter in Lake Forest.

- * Dr. Claudia Jensen, 8 N. Fir St Ventura; and 34281 Doheny Park Rd 7538 Capistrano Beach (805) 648-LOVE (5683).
- * Madison Burbank Medical Center (Dr. McBeth) 678 S. Indian Hill Blvd #302, Claremont (909) 626-9131.
- * Natural Care for Wellness (Dr. Cristal Dawn Speller), Ventura/Santa Barbara/San Fernando Valley (310) 975-5832 naturalcare4wellness.com
- * Dr. William Eidelman, 1654 N. Cahuenga Blvd, Los Angeles (323) 463-3295 www.dreidelman.com
- * CC for Wellness: Dr. Tom Zaharakis & Dr. Eve H. Elting Malibu, North Hollywood, Long Beach 1- 877-CCW-4201 www.cc4wellness.com
- * Dr. James Eisenberg, Santa Monica 877-468-5874
- * Dr. Christine Paoletti, 1304-15th St #405, Santa Monica 310-319-6116 www.cannadvise.com
- * Dr. Vivi Stafford Mathur, 6051 San Vicente, Los Angeles (323) 954-9162
- * Dr. Dean Weiss, 122 S. Lincoln Blvd #205, Venice (310) 437-3407
- * Dr. Wesley Albert, 1605 W. Olympic Blvd #9090, Los Angeles (213) 477-4186
- * The Holistic Clinic (Dr. Daniel Cham) 1700 Westwood Blvd. #201, Los Angeles (888) 420-2546 www.my420clinic.com Sat. 12pm-4pm; and 11454 Whittier Blvd, Whittier Tu-Th 4pm-7:30PM.
- * Dr. Anna Gravich, 425 S. Fairfax Ave. #302, Los Angeles (323) 954-0231. www.myspace.com/cannabisdoctor
- * Aldridge Medical Inc (Dr. Shawn Aldridge), 8932 Woodman Ave. #102, Arleta (818) 920-6800. Open Tu-Th 10-5.
- * Dr. Craig S. Cohen, 462 N. Linden Dr. #247, Beverly Hills (323) 939-2248 www.craigcohenMD.com
- * Dr. Jaafar Bermani, 249 E. Ocean Blvd #220 Long Beach (562) 983-6870
- * Dr. Denney, Dr Sullivan & Dr. Michael Gitter, 22691 Lambert St, Lake Forest, Orange County (949) 855-8845
- * Dr. Robert Sterner, San Diego: Phone (619) 543-1061
- * Dr Alfonso Jimenez San Diego, Orange Co, Los Angeles, Hawaii 1-888-215-HERB www.1888215HERB.com
- * Dr. Joseph Altamirano, Orange County (949) 551-6447
- * Dr. Kenneth Johnson, MediMAR Clinic, 2667 Camino Del Rio, South #315, San Diego (619) 297-3800 www.medimarclinic.com
- * Cal. Green Consultants (Dr. Joseph Durante), 1760 Cameron Ave #100, West Covina (626) 476-3000.
- * Blue Mountain Medical (Dr. Stuart Kramer), 19730 Ventura Blvd #104, Woodland Hills by appointment only - (818) 716-5179
- * Norcal Health Care, 2808 F St. #D, Bakersfield (661) 322-4258
- * Medicann 866-632-6627 www.medicannusa.com. o Elizabeth Harrington, 1107 Greenacre Ave, West Hollywood 866-632-6627 o Austin Elguindy, 21712 Devonshire St, Chatsworth 866-632-6627 o Austin Elguindy, 4295 Genser St. #1B San Diego 866-632-6627
- * Alternative Care Consultants: www.accsocal.com(866) 420-7215 o Dr. Robert Cohen, 6333 Wilshire Blvd #209, Los Angeles (866) 420-7215 o Dr Benjamin Graves 4452 Park Blvd #314 San Diego (866) 420-7215 o Dr. Elaine James 4201 Long Beach Blvd #410 Long Beach(866) 420-7215 o Dr. Michael Solomon 1733 N. Palm Canyon Dr Palm Springs (866) 420-7215
- * Cal. Physician Referral Services
 - o California Alliance for Medical MJ Patients (Ventura LA area) (805) 890-1365
 - o Pacific Support Services 8921 Sunset Blvd. Greater LA 877-468-5874
 - o Natural Remedies Health Center Clinic- 2141 Broadway #8, Oakland (510) 444-5771.
 - o West Hollywood Medical Marijuana Evaluations 866-468-587

Within the next 120 days the county of orange health department will be issuing medical marijuana ID cards (per SB420) They will verify recommendations and issue a state card.

I will be very happy to give you any information you may require to help you understand

about medical marijuana and dispensaries.

Thank You Marla James 714-377-9434

Ramos, Ricky

From:

Flynn, Joan

Sent:

Tuesday, August 14, 2007 6:21 PM

To:

Ramos, Ricky

Subject:

Fw: Support for medical marijuana dispensaries

One additional email Joan L. Flynn, CMC Huntington Beach City Clerk

---- Original Message -----

From: Craig Marshall/Cubensis <cubensis.craig@verizon.net>

To: Flynn, Joan

Sent: Tue Aug 14 18:13:08 2007

Subject: Support for medical marijuana dispensaries

City Clerk

RE: Medical Marijuana Dispensaries

I am a Huntington Beach resident. I support the existence of medical marijuana facilities in our city. Although I do not use marijuana, I am convinced by solid evidence that its use for medicinal purposes is effective, appropriate, and logical.

Please consider allowing medical marijuana dispensaries to operate in HB. To ban such facilities would be outrageous and against the public conscience.

Sincerely,

Craig Marshall



This is an entirely new area of activity, but there are successful precedents to follow. It is important to remember that medical cannabis is legal under state law, and that you are developing regulations for access to a legitimate medicine. The goals of local regulation should be: (1) to ensure that there is a safe, reliable, and sanctioned source of medication for legal patients in your community; and (2) to protect your community from nuisance activity or other harm that may result from the improper operation of these organizations.

We need the participation of the entire community to develop and successfully implement effective regulations for dispensaries. We encourage you to include the voices of patients, providers, and advocates so that they can be heard alongside those of law enforcement and civic leaders. To assist in this process, ASA is committed to helping local governments find ways to implement the will of California voters while protecting the interests of patients and their neighbors. Please utilize our resources at AmericansForSafeAccess.org, and do not hesitate to contact us with any questions or concerns. And, most importantly, please let us know what you think of the enclosed report.

Sincerely,

Rebecca Saltzman Chief of Staff

Alu Sur

(510) 251-1856 x 308

Rebecca@SafeAccessNow.org

Americans For Safe Access

AN ORGANIZATION OF MEDICAL PROFESSIONALS, SCIENTISTS, AND PATIENTS HELPING PATIENTS



Headquarters

1322 Webster Street, Suite 402, Oakland, California, 94612 PHONE: 510.251.1856 FAX: 510.251.2036

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1906 Sunderland Place, NW, Washington DC 20036 PHONE: 202.857.4272 FAX: 202.857.4273

WEB: www.AmericansForSafeAccess.org TOLL FREE: 1.888.929.4367

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Americans For Safe Access

AN ORGANIZATION OF MEDICAL PROFESSIONALS, SCIENTISTS AND PATIENTS HELPING PATIENTS

California's original medical cannabis law, the Compassionate Use Act (Prop. 215), directs local officials to implement ways for qualified patients to access their medicine. With the passage of state legislation (SB 420) in 2003, and the 2005 court ruling in *People v. Urziceanu*, medical cannabis dispensing collectives (or dispensaries) are now recognized as legal entities. Since most of the more than 150,000 cannabis patients in California (NORML 2005 estimate) rely on dispensaries for their medicine, communities across the state are facing requests for business licenses or zoning decisions related to the operation of dispensaries.

Americans for Safe Access, the leading national organization representing the interests of medical cannabis patients and their doctors, has undertaken a study of the experience of those communities that have dispensary ordinances. The report that follows details those experiences, as related by local officials; it also covers some of the political background and current legal status of dispensaries, outlines important issues to consider in drafting dispensary regulations, and summarizes a recent study by a University of California, Berkeley researcher on the community benefits of dispensaries. In short, this report describes why:

Regulated dispensaries benefit the community by:

providing access for the most seriously ill and injured

- offering a safer environment for patients than having to buy on the illicit market
- improving the health of patients through social support
- helping patients with other social services, such as food and housing
- having a greater than average customer satisfaction rating for health care

Creating dispensary regulations combats crime because:

- dispensary security reduces crime in the vicinity
- street sales tend to decrease
- patients and operators are vigilant
- any criminal activity gets reported to police

Regulated dispensaries are:

- legal under California state law
- helping revitalize neighborhoods
- bringing new customers to neighboring businesses
- not a source of community complaints

This report concludes with a section outlining the important elements for local officials to consider as they move forward with regulations for dispensaries. ASA has worked successfully with officials in Kern County, Los Angeles, San Francisco and elsewhere to craft ordinances that meet the state's legal requirements, as well as the needs of patients and the larger community. Please contact ASA if you have questions: 888-929-4367.

For more information, see www.AmericansForSafeAccess.org or contact the ASA office at 1-888-929-4367 or 510-251-1856.

OVERVIEW OF MEDICAL CANNABIS DISPENSARIES

"As the number of patients in the state of California who rely upon medical cannabis for their treatment continues to grow, it is increasingly imperative that cities and counties address the issue of dispensaries in our respective communities. In the city of Oakland we recognized this need and adopted an ordinance which balances patients' need for safe access to treatment while reassuring the community that these dispensaries are run right. A tangential benefit of the dispensaries has been that they have helped to stimulate economic development in the areas where they are located."

Desley Brooks, Oakland City Councilmember

ABOUT THIS REPORT

Land-use decisions are now part of the implementation of California's medical marijuana, or cannabis, laws. As a result, medical cannabis dispensing collectives (dispensaries) are the subject of considerable debate by planning and other local officials. Dispensaries have been operating openly in many communities since the passage of Proposition 215 in 1996. As a compassionate, community-based response to the problems patients face in trying to access cannabis, dispensaries are currently used by more than half of all patients in the state and are essential to those most seriously ill or injured. Since 2003, when the legislature further implemented state law by expressly addressing the issue of patient collectives and compensation for cannabis, more dispensaries have opened and more communities have been faced with questions about business permits and land use options.

In an attempt to clarify the issues involved, Americans for Safe Access has conducted a survey of local officials in addition to continuously tracking regulatory activity throughout the state. (safeaccessnow.org/regulations.) The report that follows outlines some of the underlying questions and provides an overview of the experiences of cities and counties around the state. In many parts of California, dispensaries have operated responsibly and provided essential services to the most needy without local intervention, but

city and county officials are also considering how to arrive at the most effective regulations for their community, ones that respect the rights of patients for safe and legal access within the context of the larger community.

ABOUT AMERICANS FOR SAFE ACCESS

Americans for Safe Access (ASA) is the largest national member-based organization of patients, medical professionals, scientists and concerned citizens promoting safe and legal access to cannabis for therapeutic uses and research. ASA works in partnership with state, local and national legislators to overcome barriers and create policies that improve access to cannabis for patients and researchers. We have more than 30,000 active members with chapters and affiliates in more than 40 states.

THE NATIONAL POLITICAL LANDSCAPE

A substantial majority of Americans support safe and legal access to medical cannabis. Public opinion polls in every part of the country show majority support cutting across political and demographic lines. Among them, a Time/CNN poll in 2002 showed 80% national support; a survey of AARP members in 2004 showed 72% of older Americans support legal access, with those in the western states polling 82% in favor.

This broad popular consensus, combined with an intransigent federal government which

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refuses to acknowledge medical uses for cannabis, has meant that Americans have turned to state-based solutions. The laws voters and legislators have passed are intended to mitigate the effects of the federal government's prohibition on medical cannabis by allowing qualified patients to use it without state or local interference. Beginning with California in 1996, voters passed initiatives in eight states plus the District of Columbia -Alaska, Colorado, Maine, Montana, Nevada, Oregon, and Washington. State legislatures followed suit, with elected officials in Hawaii, Maryland, Rhode Island, and Vermont taking action to protect patients from criminal penalty, and the California legislature amending its voter initiative in 2003.

Momentum for these state-level provisions for compassionate use and safe access has continued to build as more research on the therapeutic uses of cannabis is published. And the public advocacy of well-known cannabis patients such as the Emmy-winning talkshow host Montel Williams has also increased public awareness and created political pressure for compassionate state and local solutions.

Twice in the past decade the U.S. Supreme Court has taken up the question. In the most recent case, Gonzales v. Raich, a split court upheld the ability of federal officials to prosecute patients if they so choose, but did not overturn state laws. In the wake of that decision, the attorneys general of California, Hawaii, Oregon, and Colorado all issued legal opinions or statements reaffirming their state's medical cannabis laws. The duty of state and local law enforcement is to the enforcement and implementation of state, not federal, law.

HISTORY OF MEDICAL CANNABIS IN CALIFORNIA

Local officials and voters in California have recognized the needs of medical cannabis patients in their communities and have taken action, even before voters made it legal in 1996. In 1991, 80% of San Francisco voters supported Proposition P. a ballot initiative which recommended a non-enforcement policy for the medical use, cultivation and distribution of marijuana. In 1992, citing both the interests of their constituency and the endorsement of therapeutic use by the California Medical Association, the San Francisco Board of Supervisors adopted a resolution urging the mayor and district attorney to accept letters from recommending physicians (Resolution No. 141-98). In 1993, the Sonoma Board of Supervisors approved a resolution mirroring a Senate Joint Resolution passed earlier that year, noting that a UN committee had called for cannabis to be made available by prescription and calling on "Federal and State representatives to support returning [cannabis] preparations to the list of available medicines which can be prescribed by licensed physicians" (Resolution No. 93-1547).

Since 1996 when 56% of California voters approved the Compassionate Use Act (CUA), public support for safe and legal access to medical cannabis has only increased. A statewide Field poll in 2004 found that "three in four voters (74%) favors implementation of the law. Voter support for the implementation of Prop. 215 cuts across all partisan, ideological and age subgroups of the state." (field.com/fieldpollonline/subscribers/Rls2105.pdf)

Even before the release of that Field poll, state legislators recognized that there is both strong support among voters for implementing the safe and legal access promised by the Compassionate Use Act (CUA) and little direction as to how local officials should proceed. This led to the drafting and passage of Senate Bill 420 in 2003, which amended the CUA to spell out more clearly the obligations of local officials for implementation.

WHAT IS A CANNABIS DISPENSARY?

The majority of medical marijuana (cannabis) patients cannot cultivate their medicine for themselves or find a caregiver to grow it for them. Most of California's estimated 200,000 patients obtain their medicine from a Medical

Cannabis Dispensing Collective (MCDC), often referred to as a "dispensary." Dispensaries are typically storefront facilities that provide medical cannabis and other services to patients in need. There are more than 200 dispensaries operating in California as of August 2006. Dispensaries operate with a closed membership that allow only patients and caregivers to obtain cannabis and only after membership is approved (upon verification of patient documentation). Many dispensaries offer on-site consumption, providing a safe and comfortable place where patients can medicate. An increasing number of dispensaries offer additional services for their patient membership, including such services as: massage, acupuncture, legal trainings, free meals, or counseling. Research on the social benefits for patients is discussed in the last section of this report.

RATIONALE FOR CANNABIS DISPENSARIES

While the Compassionate Use Act does not explicitly discuss medical cannabis dispensaries, it calls for the federal and state governments to "implement a plan to provide for the safe and affordable distribution of marijuana to all patients in medical need of marijuana." (Health & Safety Code § 11362.5) This portion of the law has been the basis for the development of compassionate, communitybased systems of access for patients in various parts of California. In some cases, that has meant the creation of patient-run growing collectives that allow those with cultivation expertise to help other patients obtain medicine. In most cases, particularly in urban settings, that has meant the establishment of medical cannabis dispensing collectives, or dispensaries. These dispensaries are typically organized and run by groups of patients and their caregivers in a collective model of patientdirected health care that is becoming a model for the delivery of other health services.

MEDICAL CANNABIS DISPENSARIES ARE LEGAL UNDER STATE LAW

In an effort to clarify the voter initiative of 1996 and aid in its implementation across the

state, the California legislature enacted Senate Bill 420 in 2004, which expressly states that qualified patients and primary caregivers may collectively or cooperatively cultivate cannabis for medical purposes (Cal. Health & Safety Code section 11362.775). This provision has been interpreted by the courts to mean that dispensing collectives, where patients may buy their medicine, are legal entities under state law. California's Third District Court of Appeal affirmed the legality of collectives and cooperatives in 2005 in the case of People v. Urziceanu, which held that SB 420, which the court called the Medical Marijuana Program Act (MMPA), provides collectives and cooperatives a defense to marijuana distribution charges. Drawing from the Compassionate Use Act's directive to implement a plan for the safe and affordable distribution of medical marijuana, the court found that the MMPA and its legalization of collectives and cooperatives represented the state government's initial response to this mandate. By expressly providing for reimbursement for marijuana and services in connection with collectives and cooperatives, the Legislature has abrogated earlier cases, such as Trippett, Peron, and Young, and established a new defense for those who form and operate collectives and cooperatives to dispense marijuana. (See People v. Urziceanu (2005) 132 Cal.App.4th 747, 33 Cal.Rptr.2d 859, 881.)

This new case law parallels the interpretation of SB 420 provided to the League of Cities last year by Berkeley Assistant City Attorney Matthew J. Orebic, in his presentation "Medical Marijuana: The conflict between California and federal law and its effect on local law enforcement and ordinances." As he states in that report:

In the 2004 legislation, Section 11362.775 ... expressly allow[s] medical marijuana to be cultivated collectively by qualified patients and primary caregivers, and by necessary implication, distributed among the collective's members... Under the collective model, qualified patients who are unwilling or unable to cultivate marijuana

on their own can still have access to marijuana by joining together with other qualified patients to form a collective.

Orebic also notes that the law allows for those involved to "receive reimbursement for services rendered in supplying the patient with medical marijuana."

WHY PATIENTS NEED CONVENIENT DISPENSARIES

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While some patients with long-term illnesses or injuries have the time, space, and skill to cultivate their own cannabis, the majority in the state, particularly those in urban settings, do not have the ability to provide for themselves. For those patients, dispensaries are the only option for safe and legal access. This is all the more true for those individuals who are suffering from a sudden, acute injury or illness.

Many of the most serious and debilitating injuries and illnesses require immediate relief. A cancer patient, for instance, who has just begun chemotherapy will typically need immediate access for help with nausea, which is why a Harvard study found that 45% of oncologists were already recommending cannabis to their patients, even before it had been made legal in any state. It is unreasonable to exclude those patients most in need simply because they are incapable of gardening or cannot wait months for relief.

WHAT COMMUNITIES ARE DOING TO HELP PATIENTS

Many communities in California have recognized the essential service that dispensaries provide and have either tacitly allowed their creation or, more recently, created ordinances or regulations for their operation. Dispensary regulation is one way in which the city can exert local control over the policy issue and ensure the needs of patients and the community at large are being met. As of August 2006, twenty-six cities and seven counties have enacted regulations, and many more are considering doing so soon. See appendix D.)

Officials recognize their duty to implement state laws, even in instances when they may not have previously supported medical cannabis legislation. Duke Martin, mayor pro tem of Ridgecrest said during a city council hearing on their local dispensary ordinance, "it's something that's the law, and I will uphold the law."

"Because they are under strict city regulation, there is less likelihood of theft or violence and less opposition from angry neighbors. It is no longer a controversial issue in our city."

—Mike Rotkin, Santa Cruz

This understanding of civic obligation was echoed at the Ridgecrest hearing by Councilmember Ron Carter, who said, "I want to make sure everything is legitimate and above board. It's legal. It's not something we can stop, but we can have an ordinance of regulations."

Similarly, Whittier Planning Commissioner R.D. McDonnell spoke publicly of the benefits of dispensary regulations at a city government hearing. "It provides us with reasonable protections," he said. "But at the same time provides the opportunity for the legitimate operations."

Whittier officials discussed the possibility of an outright ban on dispensary operations, but Greg Nordback said, "It was the opinion of our city attorney that you can't ban them; it's against the law. You have to come up with an area they can be in." Whittier passed its dispensary ordinance in December 2005.

Placerville Police Chief George Nielson commented that, "The issue of medical marijuana continues to be somewhat controversial in our community, as I suspect and hear it remains in other California communities. The issue of 'safe access' is important to some and not to others. There was some objection to the dispensary ordinance, but I would say it was a vocal minority on the issue."

IMPACT OF DISPENSARIES AND REGULATORY ORDINANCES ON COMMUNITIES IN CALIFORNIA

DISPENSARIES REDUCE CRIME AND IMPROVE PUBLIC SAFETY

Some reports have suggested that dispensaries are magnets for criminal activity or other behavior that is a problem for the community, but the experience of those cities with dispensary regulations says otherwise. Crime statistics and the accounts of local officials surveyed by ASA indicate that crime is actually reduced by the presence of a dispensary. And complaints from citizens and surrounding businesses are either negligible or are significantly reduced with the implementation of local regulations.

This trend has led multiple cities and counties to consider regulation as a solution. Kern County, which passed a dispensary ordinance in July 2006, is a case in point. The sheriff there noted in his staff report that "regulatory oversight at the local levels helps prevent crime directly and indirectly related to illegal operations occurring under the pretense and protection of state laws authorizing Medical Marijuana Dispensaries." Although dispensary-related crime has not been a problem for the county, the regulations will help law enforcement determine the legitimacy of dispensaries and their patients.

The sheriff specifically pointed out that, "existing dispensaries have not caused noticeable law enforcement of secondary effects and problems for at least one year. As a result, the focus of the proposed Ordinance is narrowed to insure Dispensary compliance with the law" (Kern County Staff Report, Proposed Ordinance Regulating Medical Cannabis Dispensaries, July 11, 2006).

The presence of a dispensary in the neighborhood can actually improve public safety and reduce crime. Most dispensaries take security

for their members and staff more seriously than many businesses. Security cameras are often used both inside and outside the premises, and security guards are often employed to ensure safety. Both cameras and security guards serve as a general deterrent to criminal activity and other problems on the street. Those likely to engage in such activities will tend to move to a less-monitored area, thereby ensuring a safe environment not only for dispensary members and staff but also for neighbors and businesses in the surrounding area.

Residents in areas surrounding dispensaries have reported improvements to the neighborhood. Kirk C., a long time San Francisco resident, commented at a city hearing, "I have lived in the same apartment along the Divisadero corridor in San Francisco for the past five years. Each store that has opened in my neighborhood has been nicer, with many new restaurants quickly becoming some of the city's hottest spots. My neighborhood's crime and vandalism seems to be going down year after year. It strikes me that the dispensaries have been a vital part of the improvement that is going on in my neighborhood."

Oakland's city administrator for the ordinance regulating dispensaries, Barbara Killey, notes that "The areas around the dispensaries may be some of the most safest areas of Oakland now because of the level of security, surveillance, etc...since the ordinance passed."

Likewise, Santa Rosa Mayor Jane Bender noted that since the city passed its ordinance, there appears to be "a decrease in criminal activity. There certainly has been a decrease in complaints. The city attorney says there have been no complaints either from citizens nor from neighboring businesses." Those dispensaries that go through the permitting process or otherwise comply with local ordinances tend, by their very nature, to be those most interested in meeting community standards and being good neighbors. Cities enacting ordinances for the operation of dispensaries may even require security measures, but it is a matter of good business practice for dispensary operators since it is in their own best interest. Many local officials surveyed by ASA said dispensaries operating in their communities have presented no problems, or what problems there may have been significantly diminished once an ordinance or other regulation was instituted.

Mike Rotkin, fifth-term councilmember and former four-term mayor in the City of Santa Cruz, says about his city's dispensary, "It provides a legal (under State law) service for people in medical need. Because it is well run and well regulated and located in an area acceptable to the City, it gets cooperation from the local police. Because they are under strict city regulation, there is less likelihood of theft or violence and less opposition from angry neighbors. It is no longer a controversial issue in our city."

Regarding the decrease in complaints about existing dispensaries, several officials said that ordinances significantly improved relations with other businesses and the community at large. An Oakland city council staff member noted that they, "had gotten reports of break ins. That kind of activity has stopped. That danger has been eliminated."

WHY DIVERSION OF MEDICAL CANNABIS IS TYPICALLY NOT A PROBLEM

One of the concerns of public officials is that dispensaries make possible or even encourage the resale of cannabis on the street. But the experience of those cities which have instituted ordinances is that such problems, which are rare in the first place, quickly disappear. In addition to the ease for law enforcement of monitoring openly operating facilities, dispensaries universally have strict rules about how

members are to behave in and around the dispensary. Many have "good neighbor" trainings for their members that emphasize sensitivity to the concerns of neighbors, and all absolutely prohibit the resale of cannabis to anyone. Anyone violating that prohibition is typically banned from any further contact with the dispensary.

"The areas around the dispensaries may be some of the most safest areas of Oakland now because of the level of security, surveillance, etc. since the ordinance passed."

—Barbara Killey, Oakland

As Oakland's city administrator for the regulatory ordinance explains, "dispensaries themselves have been very good at self policing against resale because they understand they can lose their permit if their patients resell."

In the event of street or other resale, local law enforcement has at its disposal all the many legal penalties the state provides. This all adds up to a safer street environment with fewer drug-related problems than before dispensary operations were permitted in the area. The experience of the City of Oakland is a good example of this phenomenon. The city's legislative analyst, Lupe Schoenberger, stated that, "...[P]eople feel safer when they're walking down the street. The level of marijuana street sales has significantly reduced."

Dispensaries operating with the permission of the city are also more likely to appropriately utilize law enforcement resources themselves, reporting any crimes directly to the appropriate agencies. And, again, dispensary operators and their patient members tend to be more safety conscious than the general public, resulting in great vigilance and better preemptive measures. The reduction in crime in areas with dispensaries has been reported anecdotally by law enforcement in several communities.

DISPENSARIES CAN BE GOOD NEIGHBORS

Medical cannabis dispensing collectives are typically positive additions to the neighborhoods in which they locate, bringing additional customers to neighboring businesses and reducing crime in the immediate area.

Like any new business that serves a different customer base than the existing businesses in the area, dispensaries increase the revenue of other businesses in the surrounding area simply because new people are coming to access services, increasing foot traffic past other establishments. In many communities, the opening of a dispensary has helped revitalize an area. While patients tend to opt for dispensaries that are close and convenient, particularly since travel can be difficult, many patients will travel to dispensary locations in parts of town they would not otherwise visit. Even if patients are not immediately utilizing the services or purchasing the goods offered by neighboring businesses, they are more likely to eventually patronize those businesses because of convenience.

ASA's survey of officials whose cities have passed dispensary regulations found that the vast majority of businesses adjoining or near dispensaries had reported no problems associated with a dispensary opening after the implementation of regulation.

Kriss Worthington, longtime councilmember in Berkeley, said in support of a dispensary there, "They have been a responsible neighbor and vital organization to our diverse community. Since their opening, they have done an outstanding job keeping the building clean, neat, organized and safe. In fact, we have had no calls from neighbors complaining about them, which is a sign of respect from the community. In Berkeley, even average restaurants and stores have complaints from neighbors."

Mike Rotkin, fifth term councilmember and former four term mayor in the City of Santa Cruz said about the dispensary that opened there last year, "The immediately neighboring businesses have been uniformly supportive or neutral. There have been no complaints either

about establishing it or running it."

Mark Keilty, Planning and Building director of Tulare, when asked if the existence of dispensaries affected local business, said they had "no effect or at least no one has complained."

And Dave Turner, mayor of Fort Bragg, noted that before the passage of regulations there were "plenty of complaints from both neighboring businesses and concerned citizens," but since then, it is no longer a problem. Public officials understand that, when it comes to dispensaries, they must balance both the humanitarian needs of patients and the concerns of the public, especially those of neighboring residents and business owners.

"Dispensaries themselves have been very good at self policing against resale because they understand they can lose their permit if their patients resell." —Barbara Killey, Oakland

Oakland City Councilmember Nancy J. Nadel wrote in an open letter to her fellow colleagues across the state, "Local government has a responsibility to the medical needs of its people, even when it's not a politically easy choice to make. We have found it possible to build regulations that address the concerns of neighbors, local businesses law enforcement and the general public, while not compromising the needs of the patients themselves. We've found that by working with all interested parities in advance of adopting an ordinance while keeping the patients' needs foremost, problems that may seem inevitable never arise."

Mike Rotkin of Santa Cruz stated that since Santa Cruz enacted an ordinance for dispensary operations, "Things have calmed down. The police are happy with the ordinance, and that has made things a lot easier. I think the fact that we took the time to give people who wrote us respectful and detailed explanations of what we were doing and why made a real difference."

BENEFITS OF DISPENSARIES TO THE PATIENT COMMUNITY

DISPENSARIES PROVIDE MANY BENEFITS TO THE SICK AND SUFFERING

Safe and legal access to cannabis is the reason dispensaries have been created by patients and caregivers around the state. For many people, dispensaries remove significant barriers to their ability to obtain cannabis. Patients in urban areas with no space to cultivate cannabis, those without the requisite gardening skills to grow their own, and, most critically, those who face the sudden onset of a serious illness or who have suffered a catastrophic illness — all tend to rely on dispensaries as a compassionate, community-based solution that is an alternative to potentially dangerous illicit market transactions.

Many elected officials around the state recognize the importance of dispensaries for their constituents. As Nathan Miley, former Oakland City councilmember and now Alameda County supervisor said in a letter to his colleagues, "When designing regulations, it is crucial to remember that at its core this is a healthcare issue, requiring the involvement and leadership of local departments of public health. A pro-active healthcare-based approach can effectively address problems before they arise, and communities can design methods for safe, legal access to medical marijuana while keeping the patients' needs foremost."

Likewise, Abbe Land, mayor of West Hollywood says safe access is "very important" and long-time councilmember John Duran agreed, adding, "We have a very high number of HIV-positive residents in our area. Some of them require medical marijuana to offset the medications they take for HIV." Jane Bender, mayor of Santa Rosa, says, "There are legitimate patients in our community, and I'm glad they have a safe means of

obtaining their medicine."

Oakland's city administrator for ordinances, said safe access to cannabis is "very important" for the community. "In the finding the council made to justify the ordinance, they say 'have safe and affordable access'."

And Mike Rotkin, the longtime Santa Cruz elected official, said that this is also an important matter for his city's citizens: "The council considers it a high priority and has taken considerable heat to speak out and act on the issue."

It was a similar decision of social conscience that lead to Placerville's city council putting a regulatory ordinance in place. Councilmember Marian Washburn told her colleagues that "as you get older, you know people with diseases who suffer terribly, so that is probably what I get down to after considering all the other components."

While dispensaries provide a unique way for patients to obtain the cannabis their doctors have recommended, they typically offer far more that is of benefit to the health and welfare of those suffering both chronic and acute medical problems.

Dispensaries are often called "clubs" in part because many of them offer far more than a clinical setting for obtaining cannabis. Recognizing the isolation that many seriously ill and injured people experience, many dispensary operators chose to offer a wider array of social services, including everything from a place to congregate and socialize to help with finding housing and meals. The social support patients receive in these settings has farreaching benefits that is also influencing the development of other patient-based care models.

RESEARCH SUPPORTS THE DISPENSARY MODEL

A 2006 study by Amanda Reiman, Ph.D. of the School of Social Welfare at the University of California, Berkeley examined the experience of 130 patients spread among seven different dispensaries in the San Francisco Bay Area, Dr. Reiman's study cataloged the patients' demographic information, health status, consumer satisfaction, and use of services, while also considering the dispensaries' environment, staff, and services offered. The study found that "medical cannabis patients have created a system of dispensing medical cannabis that also includes services such as counseling. entertainment and support groups, all important components of coping with chronic illness." She also found that levels of satisfaction with the care received at dispensaries ranked significantly higher than those reported for health care nationally.

Patients who use the dispensaries studied uniformly reported being well satisfied with the services they received, giving an 80% satisfaction rating. The most important factors for patients in choosing a medical cannabis dispensary were: feeling comfortable and secure, familiarity with the dispensary, and having a rapport with the staff. In their comments, patients tended to note the helpfulness and kindness of staff and the support found in the presence of other patients.

Patients in Dr. Reiman's study frequently cited their relationships with staff as a positive factor. Comments from six different dispensaries include:

"I love this spot because of the love they give, always! They treat everyone like a family loved one!"

"This particular establishment is very friendly for the most part and very convenient for me."

"The staff and patients are like family to me!"

"The staff are warm and respectful."

"The staff at this facility are always cordial

and very friendly. I enjoy coming."

"This is the friendliest dispensary that I have ever been to and the staff is always warm and open. That's why I keep coming to this place. The selection is always wide."

MANY DISPENSARIES PROVIDE KEY SOCIAL SERVICES

Dispensaries offer many cannabis-related services that patients cannot otherwise obtain. Among them is an array of cannabis varieties, some of which are more useful for certain afflictions than others, and staff awareness of what types of cannabis other patients report to be helpful. In other words, one variety of cannabis may be effective for pain control while another may be better for combating nausea. Dispensaries allow for the pooling of information about these differences and the opportunity to access the type of cannabis likely to be most beneficial.

"There are legitimate patients in our community, and I'm glad they have a safe means of obtaining their medicine."

-Jane Bender, Santa Rosa

Other cannabis-related services include the availability of cannabis products in other forms than the smokeable ones. While most patients prefer to have the ability to modulate dosing that smoking easily allows, for others, the effects of edible cannabis products are preferable. Dispensaries typically offer edible products such as brownies or cookies for those purposes. Many dispensaries also offer classes on how to grow your own cannabis, classes on legal matters, trainings for health-care advocacy, and other seminars.

Beyond providing safe and legal access to cannabis, the dispensaries studied also offer important social services to patients, including counseling, help with housing and meals, hospice and other care referrals, and, in one case, even doggie daycare for members who have doctor appointments or work commitments. Among the broader services the study found in dispensaries are support groups, including groups for women, veterans, and men; creativity and art groups, including groups for writers, quilters, crochet, and crafts; and entertainment options, including bingo, open mike nights, poetry readings, internet access, libraries, and puzzles. Clothing drives and neighborhood parties are among the activities that patients can also participate in through their dispensary.

Social services such as counseling and support groups were reported to be the most commonly and regularly used service, with two-thirds of patients reporting that they use social services at dispensaries 1-2 times per week. Also, life services, such as free food and housing help, were used at least once or twice a week by 22% of those surveyed.

"Local government has a responsibility to the medical needs of its people, even when it's not a politically easy choice to make. We have found it possible to build regulations that address the concerns of neighbors, local businesses law enforcement and the general public, while not compromising the needs of the patients themselves. We've found that by working with all interested parities in advance of adopting an ordinance while keeping the patients' needs foremost, problems that may seem inevitable never arise." —Nancy Nadel, Oakland

Dispensaries offer chronically ill patients even more than safe and legal access to cannabis and an array of social services. The study found that dispensaries also provided other social benefits for the chronically ill, an important part of the bigger picture:

[T]he multiple services provided by the

social model are only part of the culture of social club facility. Another component of this model ... is the possible benefit that social support has for one diagnosed with a chronic and/or terminal physical or psychological illness. Beyond the support that medical cannabis patients receive from services is the support received from fellow patients, some of whom are experiencing the same or similar physical/psychological symptoms.... It is possible that the mental health benefits from the social support of fellow patients is an important part of the healing process, separate from the medicinal value of the cannabis itself.

Several researchers and physicians who have studied the issue of the patient experience with dispensaries have concluded that there are other important positive effects stemming from a dispensary model that includes a component of social support groups.

Dr. Reiman notes that, "support groups may have the ability to address issues besides the illness itself that might contribute to longterm physical and emotional health outcomes, such as the prevalence of depression among the chronically ill."

For those who suffer the most serious illness, such as HIV/AIDS and terminal cancer, these groups of like-minded people with similar conditions can also help patients through the grieving process. Other research into the patient experience has found that many patients have lost or are losing friends and partners to terminal illness. These patients report finding solace with other patients who are also grieving or facing end-of-life decisions. A medical study published in 1998 concluded that the patient-to-patient contact associated with the social club model was the best therapeutic setting for ill people.

CONCLUSION

Dispensaries are proving to be an asset to the communities they serve, as well as the larger community within which they operate.

ASA's survey of local officials and monitoring of regulatory activity throughout the State of California has shown that, once working regulatory ordinances are in place, dispensaries are typically viewed favorably by public officials, neighbors, businesses, and the community at large, and that regulatory ordinances can and do improve an area, both socially and economically.

Dispensaries - now expressly legal under California state law - are helping revitalize neighborhoods by reducing crime and bringing new customers to surrounding businesses. They improve public safety by increasing the security presence in neighborhoods, reducing illicit market marijuana sales, and ensuring that any criminal activity gets reported to the appropriate law enforcement authorities.

More importantly, dispensaries benefit the community by providing safe access for those who have the greatest difficulty getting the

medicine their doctors recommend: the most seriously ill and injured. Many dispensaries also offer essential services to patients, such as help with food and housing.

Medical and public health studies have also shown that the social-club model of most dispensaries is of significant benefit to the overall health of patients. The result is that cannabis patients rate their satisfaction with dispensaries as far greater than the customersatisfaction ratings given to health care agencies in general.

Public officials across the state, in both urban and rural communities where dispensary regulatory ordinances have been adopted, have been outspoken in praise of what. Their comments are consistent on and favorable to the regulatory schemes they enacted and the benefits to the patients and others living in their communities.

As a compassionate, community-based response to the medical needs of more than 150,000 sick and suffering Californians, dispensaries are working.

APPENDIX A

RECOMMENDATIONS ON DISPENSARY REGULATIONS

Cannabis dispensaries have been operating successfully around California for a decade with very few problems. But since the legislature and courts have acted to make their legality a matter of state law more than local tolerance, the question of how to implement appropriate zoning and business licensing is coming before local officials all across the state. What follows are recommendations on matters to consider, based on adopted code as well as ASA's extensive experience working with community leaders and elected officials.

COMMUNITY OVERSIGHT

In order to appropriately resolve conflict in the community and establish a process by which complaints and concerns can be reviewed, it can often be helpful to create a community oversight committee. Such committees, if fair and balanced, can provide a means for the voices of all affected parties to be heard, and to quickly resolve problems.

The Ukiah City Council created such a task force in 2005; what follows is how they defined the group:

The Ukiah Medical Marijuana Review and Oversight Commission shall consist of seven members nominated and appointed pursuant to this section. The Mayor shall nominate three members to the commission, and the City Council shall appoint, by motion, four other members to the commission. Each nomination of the Mayor shall be subject to approval by the City Council, and shall be the subject of a public hearing and vote within 40 days. If the City Council fails to act on a mayoral nomination within 40 days of the date the nomination is transmitted to the Clerk of the City Council, the nominee shall be deemed approved. Appointments to the commission shall become effective on the date the City Council

adopts a motion approving the nomination or on the 41st day following the date the mayoral nomination was transmitted to the Clerk of the City Council if the City Council fails to act upon the nomination prior to such date.

Of the three members nominated by the Mayor, the Mayor shall nominate one member to represent the interests of City neighborhood associations or groups, one member to represent the interests of medical marijuana patients, and one member to represent the interests of the law enforcement community.

Of the four members of the commission appointed by the City Council, two members shall represent the interests of City neighborhood associations or groups, one member shall represent the interests of the medical marijuana community, and one member shall represent the interests of the public health community.

DISPENSARIES REGULATIONS ARE BEST HANDLED THROUGH THE HEALTH OR PLANNING DEPARTMENTS, NOT LAW ENFORCEMENT AGENCIES

Reason: To ensure that qualified patients, caregivers, and dispensaries are protected, general regulatory oversight duties — including permitting, record maintenance and related protocols — should be the responsibility of the local department of public health (DPH) or planning department. Given the statutory mission and responsibilities of DPH, it is the natural choice and best-suited agency to address the regulation of medical cannabis dispensing collectives. Law enforcement agencies are ill-suited for handling such matters, having little or no expertise in health and medical affairs.

Examples of responsible agencies and officials:

- Angels Camp City Administrator
- Atascadero Planning Commission
- Citrus Heights City Manager
- Los Angeles Planning Department
- Plymouth City Administrator
- San Francisco Department of Public Health
- Selma City Manager
- Visalia City Planner

ARBITRARY CAPS ON THE NUMBER OF DISPENSARIES CAN BE COUNTER-PRODUCTIVE

Reason: Policymakers do not need to set arbitrary limitations on the number of dispensing collectives allowed to operate because, as with other services, competitive market forces and consumer choice will be decisive. Dispensaries which provide quality care and patient services to their memberships will flourish, while those that do not will fail.

Capping the number of dispensaries limits consumer choice, which can result in both decreased quality of care and less affordable medicine. Limiting the number of dispensing collectives allowed to operate may also force patients with limited mobility to travel farther for access than they would otherwise need to.

Artificially limiting the supply for patients can result in an inability to meet demand, which in turn may lead to such undesirable effects as lines outside of dispensaries, increased prices, and lower quality medicine.

Examples of cities and counties without numerical caps on dispensaries:

- Dixon
- Elk Grove
- Fort Bragg
- Placerville
- Ripon
- Selma
- Tulare
- Calaveras County
- Kern County
- Los Angeles County
- City and County of San Francisco

RESTRICTIONS ON WHERE DISPENSARIES CAN LOCATE ARE OFTEN UNNECESSARY AND CAN CREATE BARRIERS TO ACCESS

Reason: As described in this report, regulated dispensaries do not generally increase crime or bring other harm to their neighborhoods, regardless of where they are located. And since for many patients travel is difficult, cities and counties should take care to avoid unnecessary restrictions on where dispensaries can locate. Patients benefit from dispensaries being convenient and accessible, especially if the patients are disabled or have conditions that limit their mobility.

It is unnecessary and burdensome for patients and dispensaries, to restrict dispensaries to industrial corners, far away from public transit and other services. Depending on a city's population density, it can also be extremely detrimental to set excessive proximity restrictions (to schools or other facilities) that can make it impossible for dispensaries to locate anywhere within the city limits. It is important to balance patient needs with neighborhood concerns in this process.

PATIENTS BENEFIT FROM ON-SITE CONSUMPTION AND PROPER VENTILATION SYSTEMS

Reason: Dispensaries that allow members to consume medicine on-site have positive psychosocial health benefits for chronically ill people who are otherwise isolated. On-site consumption encourages dispensary members to take advantage of the support services that improve patients' quality of life and, in some cases, even prolong it. Researchers have shown that support groups like those offered by dispensaries are effective for patients with a variety of serious illnesses. Participants active in support services are less anxious and depressed, make better use of their time and are more likely to return to work than patients who receive only standardized care, regardless of whether they have serious psychiatric symptoms. On-site consumption is also important for patients who face restrictions to off-site consumption, such as those in subsidized or other housing arrangements that prohibit smoking. In addition, on-site consumption provides an opportunity for patients to share information about effective use of cannabis and to use specialized delivery methods, such as vaporizers, which do not require smoking.

Examples of localities that permit on-site consumption (many stipulate ventilation requirements):

- Berkeley
- San Francisco
- Alameda County
- Kern County
- Los Angeles County

DIFFERENTIATING DISPENSARIES FROM PRIVATE PATIENT COLLECTIVES IS IMPORTANT

Reason: Private patient collectives, in which several patients grow their medicine collectively at a private location, should not be required to follow the same restrictions that are placed on retail dispensaries, since they are a different type of operation. A too-broadly written ordinance may inadvertently put untenable restrictions on individual patients and caregivers who are providing either for themselves or a few others.

Example: Santa Rosa's adopted ordinance, provision 10-40.030 (F):

"Medical cannabis dispensing collective," hereinafter "dispensary," shall be construed to include any association, cooperative, affiliation, or collective of persons where multiple "qualified patients" and/or "primary care givers," are organized to provide education, referral, or network services, and facilitation or assistance in the lawful, "retail" distribution of medical cannabis. "Dispensary" means any facility or location where the primary purpose is to dispense medical cannabis (i.e., marijuana) as a medication that has been recommended by a physician and where medical cannabis is made available to and/or distributed by or to two or more of the following: a primary caregiver and/or a qualified patient, in strict accordance with California Health and Safety Code Section 11362.5 et seq. A "dispensary" shall not include dispensing by primary caregivers to qualified patients in the following locations and uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: a clinic licensed pursuant to Chapter 1 of Division 2 of the

Health and Safety Code, a health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code, a residential care facility for persons with chronic life-threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code, residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code, a residential hospice, or a home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq., or a qualified patient's or caregiver's place of residence.

PATIENTS BENEFIT FROM ACCESS TO EDIBLES AND MEDICAL CANNABIS CONSUMPTION DEVICES

Reason: Not all patients smoke cannabis. Many find tinctures (cannabis extracts) or edibles (such as baked goods containing cannabis) to be more effective for their conditions. Allowing dispensaries to carry these items is important to patients getting the best level of care possible. For patients who have existing respiration problems or who otherwise have an aversion to smoking, edibles are essential. Conversely, for patients who do choose to smoke or vaporize, they need to procure the tools to do so. Prohibiting dispensaries from carrying medical cannabis consumption devices, often referred to as paraphernalia, forces patients to go elsewhere to procure these items. Additionally, when dispensaries do carry these devices, informed dispensary staff can explain their usage to new patients.

Examples of localities allowing dispensaries to carry edibles and delivery devices:

- Angels Camp
- Berkeley
- Citrus Heights
- Santa Cruz
- Sutter Creek
- West Hollywood
- Alameda County
- Kern County
- Los Angeles County

APPENDIX B

MEDICAL CANNABIS DISPENSARY ORDINANCE EVALUATION SURVEY QUESTIONS

- 1. What is your name and position?
- 2. How important is safe access to medical marijuana in your community?
- 3. On what date did your city/county pass its ordinance?
- 4. Were there medical cannabis dispensaries in your district before the ordinance? How many?
- 5. If any, were there any complaints against them before the ordinance was passed? If yes, who made the complaints? What were the specific complaints that were made? How frequently were complaints made?
- 6. Were there any objections to passing an ordinance to regulate medical cannabis dispensaries?
- 7. If so, what were the primary objections? Who were the main objectors?
- 8. Has the ordinance implementation allayed or amplified those concerns?

- 9. How many medical cannabis dispensaries are there now? What is the estimated population of the area that may utilize them? Do you think the current number of dispensaries is enough to address the needs of the community?
- 10. Has there been an increase or decrease in criminal activity related to dispensaries since the regulations were implemented?
- 11. How has the ordinance improved the public safety in your community? Has it worsened the public safety? How?
- 12. Has the existence of dispensaries affected local business? How do neighboring businesses view dispensaries?
- 13. What would you advocate be changed in the current regulations?
- 14. Do you have anything else you would like to say in evaluation of the medical cannabis ordinance?

For more information, see www.AmericansForSafeAccess.org or contact the ASA office at 1-888-929-4367 or 510-251-1856.

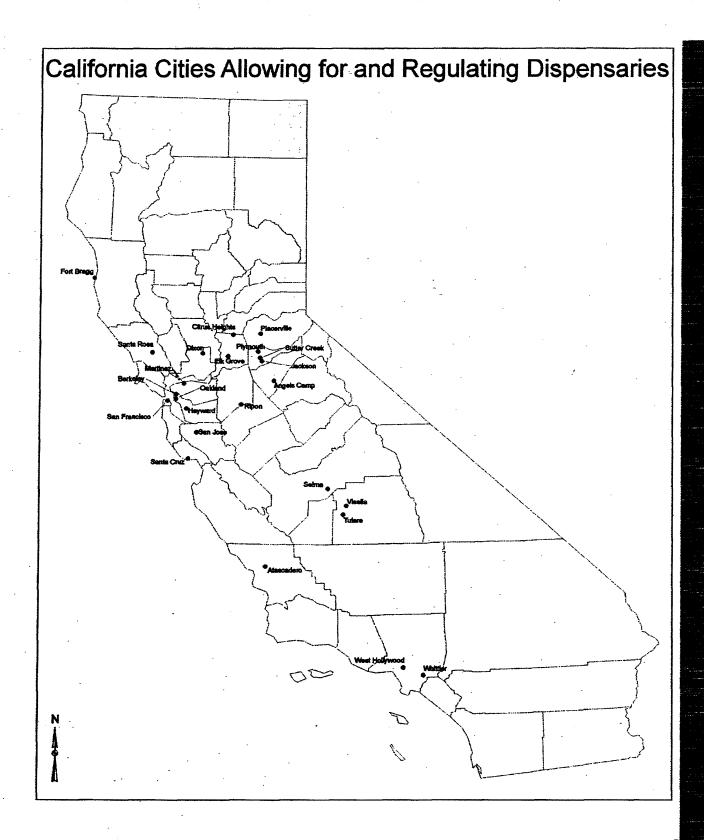
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APPENDIX C

SURVEY ANSWER AND DATA ANALYSIS **Summary**

- The majority of responses were positive.
- Safe access is important to every community.
- Complaints of dispensaries generally decrease after regulation.
- Objections to the ordinance were allayed after implementation.
- Regulation improved public safety.
- Crime decreases or shows no effect affect after regulations
- Most businesses are either supportive of or neutral about neighboring dispensaries.

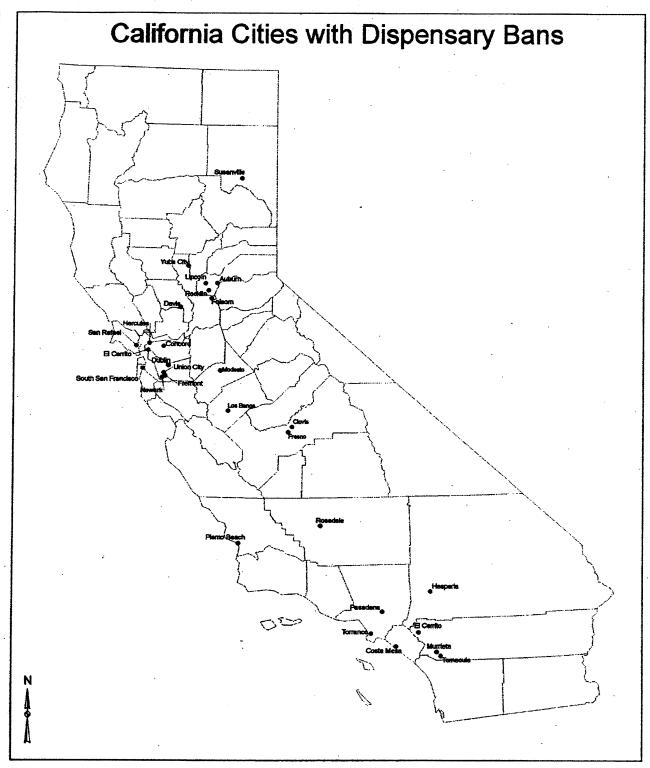
	Safe access important to local community	Dispensaries existed prior to regulation	Complaints of existing dispensaries prior to ordinance	Complaints decreased after passage of ordinance	Community objections to the ordinance	Regulation implementation allayed ordinance objections	Regulation improved public safety	Regulation resulted in decrease of crime around dispensaries	Positive effects on business post-regulation	Responses
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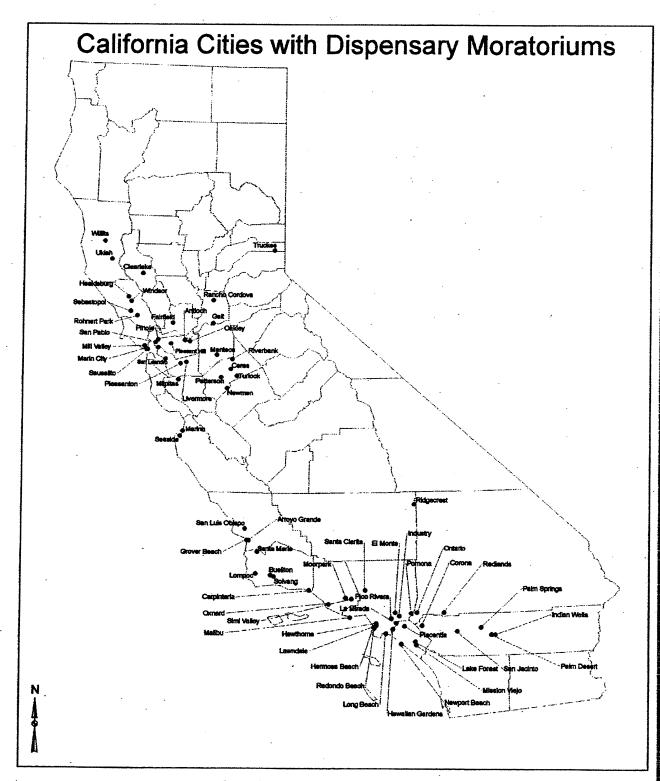
As of October 2006

For more information, see www.AmericansForSafeAccess.org or contact the ASA office at 1-888-929-4367 or 510-251-1856.

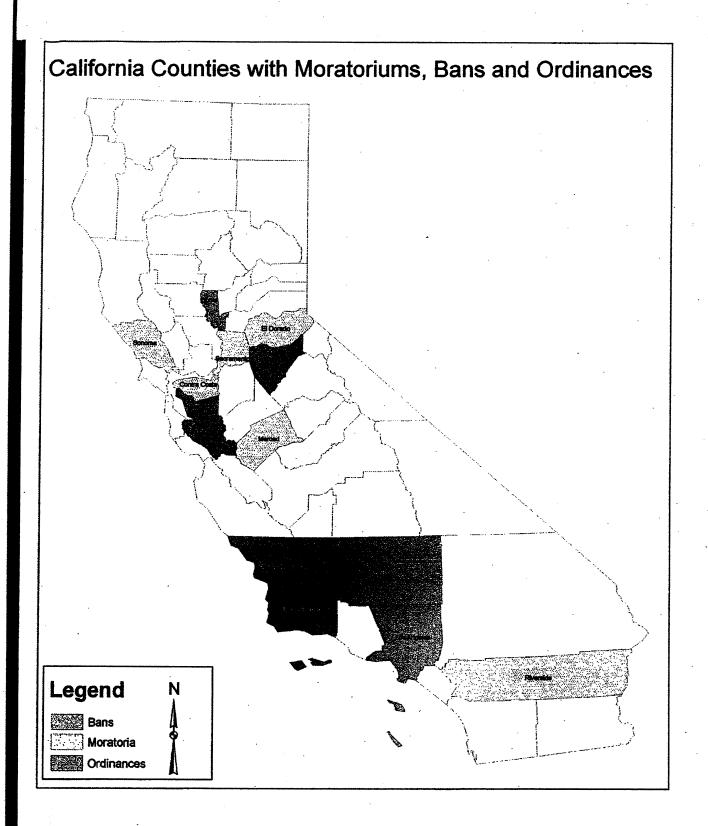
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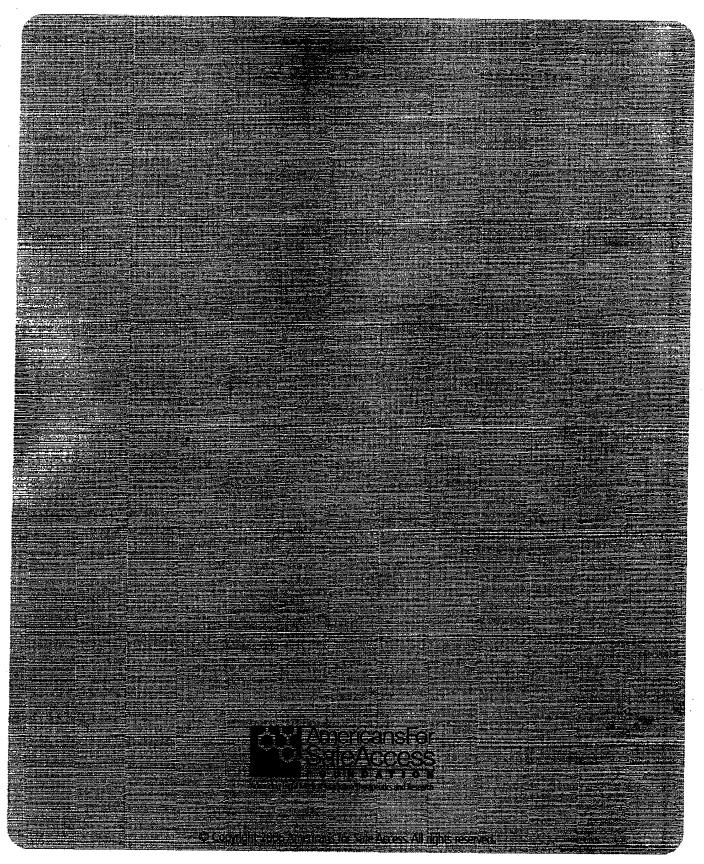
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As of October 2006



As of October 2006



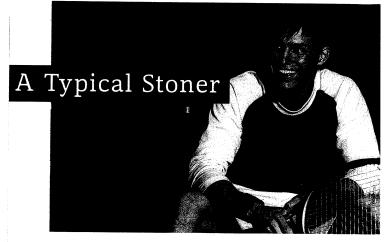
www.AmericansForSafeAccess.org 1-888-929-4367
ATTACHMENT NO. 1.49

Association of Patient Advocates

William Britt, Exec.Dir.

Phone: (562) 420-1081
Cell: (562) 818-0420
E-Mail: wbrittapa@aol.com





Josh, 28, is a full time law student and community volunteer.

He was diagnosed last year with HIV.

He's a regular user of medical marijuana. After suffering from toxic side effects of his drug regimen, he found medical marijuana helps increase his appetite, reduces nausea and lets him sleep at night. Josh has a difficult road ahead, but medical marijuana makes his days easier, and allows him to enjoy his life.

Josh never thought he was the type of person who would use marijuana as medicine, until he did - and realized that

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9/17/07 ORIGINAL-RR 9/11/07 HANDOUT

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Jan Jan Stein

1.866.632.6627 www.medicannusa.com Americans for Safe Access For Immediate Release: September 7, 2007

State Civil Court Affirms Right to Cultivate Medical Marijuana Collectively Superior Court Judge Ruled Thursday against Butte County's Ban on Patient Collectives

Chico, CA -- Butte County Superior Court issued a strongly worded ruling Thursday, affirming the right of medical marijuana patients to cultivate collectively. In no uncertain terms, Superior Court Judge Barbara Roberts ruled that seriously ill patients cultivating collectively "should not be required to risk criminal penalties and the stress and expense of a criminal trial in order to assert their rights." Judge Roberts' ruling also rejected Butte County's policy of requiring all members to physically participate in the cultivation, thereby allowing collective members to "contribute financially."

In May 2006, Americans for Safe Access (ASA), the nation's largest medical marijuana advocacy organization, filed a group lawsuit on behalf of a 7-person private patient collective, seeking declaratory and injunctive relief, as well as damages and attorneys fees. After a September 2005 warrantless search of his home in Paradise, California, by the Butte County Sheriff's Department, cultivator David Williams was forced to uproot and destroy more than two dozen plants or face arrest and prosecution. "We were told that it was not lawful to grow collectively for multiple patients," said 54-year old patient and collective member David Williams of the 2005 incident.

Thursday's Superior Court decision overruled a demurrer, filed by the County of Butte in an effort to dismiss the case. Judge Roberts found that "the destruction of plaintiffs' property was improper" if, in fact, the collective was valid under state law. "The next step," according to ASA Chief Counsel Joe Elford, "is to show that Williams was running a valid collective. At that point, the court is expected to make a final determination consistent with yesterday's ruling, which strongly vindicates the right of medical marijuana patients to associate together to grow the medicine they need."

ASA was compelled to file the Williams lawsuit after receiving repeated reports of unlawful behavior by Butte County law enforcement, as well as by other police agencies throughout the state. After uncovering Butte County's de facto ban on medical marijuana patient collectives, ASA decided to pursue the case to show that collectives and cooperatives are protected under state law. "The ruling not only affirms ASA's position that civil court is an 'appropriate forum to address the issues of medical patients' rights," said Elford. "It also sends a clear message to local law enforcement in California that they must respect the rights of patients to cultivate collectively."

For more information:

HYPERLINK

"http://www.safeaccessnow.org/downloads/Butte_County_Ruling.pdf"Butte County Superior Court ruling from September 6, 2007 HYPERLINK "http://www.safeaccessnow.org/downloads/Butte_Complaint4.pdf"ASA's lawsuit challenging Butte County's ban on collective cultivation

For Immediate Release: May 9th, 2006

LA County Victory on Medical Marijuana

For Immediate Release: May 9, 2006

LA County Reaffirms Medical Marijuana Dispensary Ordinance & Votes to Implement State ID Card Program

Los Angeles, CA – Today, the Los Angeles County Board of Supervisors approved two pieces of medical marijuana legislation that will help improve safe access for patients throughout the County. The Board voted in favor of an ordinance to regulate medical cannabis dispensing collectives (dispensaries) in unincorporated LA County and voted to move forward with the state Medical Marijuana ID Card Program. Los Angeles County joins with 3 other counties and 24 cities in California to establish guidelines and regulations governing dispensaries; and is the 22nd County to implement the State's Medical Marijuana ID Card Program. Dozens of patients and advocates in attendance applauded the Board for taking action.

Patient-advocates with Americans for Safe Access (ASA), the nation's largest medical marijuana advocacy group, were pleased with the day's proceedings. "This is a victory for patients and a solid step towards countywide implementation of Proposition 215 and SB-420, California's medical cannabis laws," said Amanda Brazel, Los Angeles County Field Coordinator for ASA. "LA County is leading the way now. This puts the nation's most populous county ahead of the curve on medical cannabis."

The popular ordinance requires safety protocols and allows for on-site consumption of medication. The ordinance also allows dispensaries to provide patients with cannabis plant cuttings to grow at home – a move that advocates say will save money and help make legal patients self-sufficient. The Board made a small change to the ordinance requiring dispensaries to obtain a full conditional use permit. This will result in a longer permitting process, especially when a permit decision is appealed.

Los Angeles County will join twenty-one other California counties in issuing the Medical Marijuana ID Card this summer, part of a statewide program mandated by the State Assembly in 2004 (SB-420). The cards will assist law enforcement in identifying medical marijuana patients, although the ID cards are voluntary for patients.

Chapter 7.55 MEDICAL MARIJUANA DISPENSARIES

Part 1 GENERAL PROVISIONS

7.55.010 Definitions.

- A. For the purposes of this chapter, the words and phrases set forth are defined and shall be construed as hereafter set out, unless it is apparent from the context than any such word or phrase has a different meaning.
- B. Whenever any word or phrase used in this chapter is not defined herein but is defined in state law or regulation or in another section of the Los Angeles County Code, the definition set forth in such state law or regulation or such other section of the Los Angeles County Code is incorporated in this chapter as though set forth herein in full, and shall apply to such word and phrase used by not defined herein.
- C. "County" means the County of Los Angeles.
- D. "Existing owner" means an owner of a medical marijuana dispensary operating on the effective date of this ordinance.
- E. "Manager" means the owner or other person designated by the owner to be the owner's on-site representative in a medical marijuana dispensary, who shall comply with the provisions set forth in Article 1 of this chapter.
- F. "Medical marijuana dispensary" means any facility or location as defined in section 22.08.130 M of this code.
- G. "Owner" or "operator" means the person, persons or legal entity having legal ownership of a business operating as a medical marijuana dispensary. Any reference in this chapter to "owning" means having existing owner status. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.020 License required.

- A. Except as provided in B, below, every medical marijuana dispensary shall have a license provided for in Part 2 of this chapter. No person shall own or operate any medical marijuana dispensary at any location until a license has been procured pursuant to Part 2 of this chapter, and payment of an annual fee has been made therefore in accordance with section 7.14.010, under the appropriate heading.

 B. Every existing owner of a medical marijuana dispensary shall comply with the licensing requirements of the procure of the pro
- B. Every existing owner of a medical marijuana dispensary shall comply with the licensing requirements of A, above, within 12 months of the effective date of this ordinance.
- C. Every person employed as a manager of a medical marijuana dispensary shall first procure a license provided for in this chapter and pay an annual license fee in the amount set forth in section 7.14.010, under the appropriate heading. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.030 Severability.

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, the remainder of the chapter or the application of such provision to other persons or circumstances shall not be affected thereby. (Ord. 2006-0036 § 3 (part), 2006.)

Part 2 LICENSING PROCEDURES

Article 1 MEDICAL MARIJUANA DISPENSARIES

7.55.040 Licensing--Hearing on application required.

The business license commission shall hold a public hearing on every application for a license required by section 7.55.020 A or B and shall give notice of such hearing as required by sections 7.10.100, 7.10.120 and 7.10.130. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.050 Prerequisites to issuance of license.

- A. A license shall not be granted or issued pursuant to this article unless the application has obtained a conditional use permit, if one is required, by Title 22 of the code.
- B. Each application form shall include a warning and disclaimer that shall include the following:
- 1. A warning that dispensary operators, managers and their employees may be subject to prosecution under federal law; and
- 2. A disclaimer that the county will not accept any legal responsibility or liability in connection with any approval of any license application and/or subsequent operation of any dispensary. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.060 License nontransferable.

Any license issued pursuant to this article shall be valid only for the medical marijuana dispensary which is the subject of the license and is not transferable to any other owner or location. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.070 License--Requirements for posting.

Any license issued pursuant to this article must be posted and exhibited at all times in an area that is visible to the public and clients of any medical marijuana dispensary. (Ord. 2006-0036 § 3 (part), 2006.)

Article 2 MEDICAL MARIJUANA DISPENSARY MANAGERS

7.55.080 Manager's license--Information required on application.

In addition to the requirements of section 7.06.020, an applicant for licensing as a manager of a medical marijuana dispensary shall also show:

- A. All residential addresses for the five (5) years immediately preceding the date of application;
- B. The name and address of the medical marijuana dispensary where the applicant intends to be employed and written proof of an offer of such employment;
- C. Written statements of reference from at least three persons who have known the applicant for at least one year;
- D. Written proof that the applicant is over the age of 18 years;
- E. Applicant's height, weight and color of eyes and hair:
- F. Two portrait photographs at least two inches by two inches taken within 60 days of the date of the application;
- G. Business, occupation or employment history of the applicant for the five (5) years immediately preceding the date of the application;
- H. The license history of the applicant, including but not limited to whether the applicant has had a license for any business or similar activity by this or any other county, by any city, or by the state revoked or suspended, and, if so, the reason or reasons therefor, and the business activity or occupation subsequent to such action or suspension or revocation;
- I. All convictions, except for minor traffic violations, and the reasons therefor;
- J. Such other identification and information determined necessary to discover the truth of the matters hereinabove specified as required to be set forth in the application; and
- K. Each application form shall include a warning and disclaimer that shall include the following:
- 1. A warning that dispensary operators, managers and their employees may be subject to prosecution under federal law; and
- 2. A disclaimer that the county will not accept any legal responsibility or liability in connection with any approval of any license application and/or subsequent operation of any dispensary. Each applicant acknowledges that the sheriff has the right to take fingerprints and additional photographs of the applicant and to confirm the height or weight of the applicant. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.090 License nontransferable.

Any license issued pursuant to this article shall be valid only for use by the manager at the medical marijuana dispensary which is identified as the employer of the applicant and is not transferable to any other manager or for use at any other medical marijuana dispensary. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.100 License--Requirements for posting.

Any license issued pursuant to this article must be posted and exhibited at all times in an area that is visible to the public and clients of any medical marijuana dispensary. (Ord. 2006-0036 § 3 (part), 2006.)

Article 3 LIABILITY INSURANCE REQUIRED

7.55.110 Liability insurance--Requirements for medical marijuana dispensary license.

A. No license shall be issued or renewed under article 1 of this part unless the licensee carries and maintains in full force and effect a policy of insurance which meets or exceeds the requirements of this section, in a form approved by the County of Los Angeles and executed by a licensed insurance broker or agent. The policy of insurance shall insure the license against liability for damage to property and for injury to or death of any person as a result of activities conducted or occurring at the medical marijuana dispensary. The minimum liability limits shall not be less than \$1,000,000 for each incident of damage to property or incident of injury to or death of a person, with a general aggregate limit of not less than \$2,000,000. The policy shall name the County of Los Angeles as an additional insured.

B. The policy of insurance shall contain an endorsement providing that said policy shall not be canceled until notice in writing has been given to the office of the Treasurer and Tax Collector at least 30 days prior to the time the cancellation becomes effective.

C. If at any time the licensee's policy of insurance expires or is canceled, the license issued or renewed pursuant to Article 1 of this part will automatically be suspended, or revoked, pursuant to sections 7.08.240 and 7.08.250 of this code. (Ord. 2006-0036 § 3 (part), 2006.)

Article 4 LICENSE REVOCATION

7.55.120 License--Permitted revocation.

The business license commission may revoke any license issued pursuant to this chapter upon a finding, based on a preponderance of the evidence, under the provisions of this title, that the licensee has violated any provision of Title 7 of the Los Angeles County Code. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.130 License--Mandatory revocation.

Notwithstanding any other provision of this Code, the commission shall revoke any license issued pursuant to this article upon finding, based upon a preponderance of the evidence, that the licensee has violated any provision of Title 7 of the Los Angeles County Code on two separate occasions within a 12-month period. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.140 Restrictions on licensing after revocation.

Whenever a license has been revoked pursuant to section 7.55.120 or 7.55.130, the former licensee, whether a person, partnership or corporation, shall not be eligible to apply for a new license for a period of one year from the effective date of such revocation. No application for a license provided for under Article 1 of this part shall be accepted or processed for any business that has had such a license revoked pursuant to this article within the preceding one-year period. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.160 Operation requirements generally.

Every establishment for which this chapter requires a license shall be maintained and operated in conformity with each and every provision of this chapter. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.170 Medical marijuana dispensary activity permitted only at medical marijuana dispensary establishment.

No establishment shall conduct any medical marijuana dispensary activity at any location requiring a license under this chapter unless such license has been issued and is valid. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.180 Hours of operation.

No establishment required to be licensed under this chapter shall be operated or any medical marijuana dispensary activity conducted therein outside of the hours specified in any conditional use permit issued pursuant to Title 22. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.190 Signs required.

- A. A recognizable and readable sign which clearly identifies the medical marijuana dispensary shall be posted at the main entrance of any medical marijuana dispensary licensed under this chapter. Such sign shall comply with all other requirements of the Los Angeles County Code and any issued conditional use permit.
- B. A recognizable and readable sign shall be posted indoors in a conspicuous location with the following warnings:
- 1. That the diversion of marijuana for non-medical purposes is a violation of state law;
- 2. That the use of medical marijuana may impair a person's ability to drive a motor vehicle or operate machinery; and
- 3. That loitering on and around the dispensary site is prohibited by California Penal Code section 647(e). (Ord. 2006-0036 § 3 (part), 2006.)

7.55.200 Alcohol prohibited.

Provision, sale or consumption of alcoholic beverages on the grounds of the medical marijuana dispensary, both interior and exterior, shall be prohibited. A person shall not enter, be or remain in any part of a medical marijuana dispensary licensed under this chapter while in the possession of, consuming or using any alcoholic beverage. The licensee, manager and/or every supervising employee shall not permit any such person to enter or remain on the premises. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.210 Minors.

It shall be unlawful for any dispensary to provide medical marijuana to any person under the age of 18 unless that person is a qualified patient or is a primary caregiver with a valid identification card in accordance with California State Health and Safety Code sections 11362.7. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.220 Manager required on premises.

Each medical marijuana dispensary licensed pursuant to this chapter shall, at all times that such dispensary is open, have present and on the premises a manager, as defined in section 7.55.010. The manager must be familiar with the requirements of this chapter and be capable of communicating the provisions of this chapter to employees and others conducting activities at the medical marijuana dispensary and to all actual or

prospective clients of and visitors to the dispensary. The manager shall make an effort to immediately identify himself or herself to the sheriff or any other county official entering the medical marijuana establishment on official business. In the owner's absence, the manager shall be authorized to accept on behalf of the owner or any other person licensed pursuant to this chapter any notice issued to such owner or other licensed person pursuant to this chapter or to Title 7. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.230 Interfering with enforcement activities prohibited.

No person shall refuse, resist or attempt to resist the entrance of the sheriff or other county official into a medical marijuana dispensary in performance of official duty or shall refuse to obey any lawful order of the sheriff or other county official made in the performance of his or her duties under the code. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.250 Edibles.

Medical marijuana may be provided by a dispensary in an edible form, provided that the edibles meet all applicable county requirements, including but not limited to the medical marijuana dispensary obtaining a public eating license pursuant to Chapter 7.72 of this code. In addition, any beverage or edible produced, provided, or sold at the facility which contains marijuana shall be so identified, as part of the packaging, with a prominent and clearly legible warning advising that the product contains marijuana and that it is to be consumed only with a physician's recommendation. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.260 On-site consumption.

Medical marijuana may be consumed on site only as follows:

A. The smoking of medical marijuana shall be allowed provided that appropriate seating, restrooms, drinking water, air purification systems, and patient supervision are provided in a room or enclosure separate from the main room and entrance to the dispensary; and

B. Consumption of edibles by ingestion shall only be allowed subject to all applicable county requirements. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.270 Devices for inhalation.

Medical marijuana dispensaries may provide specific devices, contrivances, instruments, or paraphernalia necessary for inhaling medical marijuana, including but not limited to rolling papers and related tools, pipes, water pipes, and vaporizers. The equipment may only be provided to qualified patients or primary caregivers in accordance with California Health and Safety Code section 11364.5. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.280 Cultivation and Cuttings.

Marijuana shall not be grown at or on the site of any medical marijuana dispensary, except that cuttings of the marijuana plant may be kept or maintained on-site for distribution to qualified patients and primary caregivers as follows:

A. The cuttings shall not be utilized by the medical marijuana dispensary as a source for the provision of marijuana for consumption on-site.

B. For the purposes of this section, the term "cutting" shall mean a rootless piece cut from a marijuana plant, which is no more than six inches in length, and which can be used to grow another plant at a different location. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.290 Loitering.

Medical Marijuana Dispensaries shall ensure the absence of loitering consistent with California Penal Code section 647(e). (Ord. 2006-0036 § 3 (part), 2006.)

7.55.300 Security.

Medical marijuana dispensaries shall provide security as follows:

A. An adequate and operable security system that includes security cameras and alarms to the satisfaction of the Director of Regional Planning; and

B. At least one licensed security guard present at the dispensary at all times during business hours. All security guards must be licensed by the proper authorities and must possess a valid Security Guard identification card issued by the Department of Consumer Affairs at all times. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.310 Compliance with other requirements.

Medical marijuana dispensaries shall comply with all applicable provisions of California state law and with all applicable county requirements. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.320 Release of the County from liability.

The applicant(s) and licensee(s) under this chapter shall agree to forgo seeing to hold the county, and any of its officers, employees, or assigns, liable for any injuries or damages that result from any arrest or prosecution of medical marijuana dispensary owners, operators, managers, employees or clients for violation of local, state or federal laws. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.330 County indemnification.

The owner(s), operator(s), and/or manager(s) of the medical marijuana dispensaries shall indemnify and hold harmless the county and its agents, officers, elected officials, and employees for any claims, damages, or injuries brought by any adjacent or nearby property owners or other third parties due to the operations of the dispensary and for any claims brought by any of their clients for problems, injuries, damages or liabilities of any kind that may arise out of the distribution and/or on- or off-site use of marijuana provided at the dispensary. (Ord. 2006-0036 § 3 (part), 2006.)

7.55.340 Liability for operation.

The provisions of this chapter shall not be construed to protect dispensary owners, operators, and employees, or their clients from prosecution pursuant to any laws that may prohibit the cultivation, sale, use, or possession of controlled substances. Moreover, cultivation, sale, possession, distribution, and use of marijuana remain violations of federal law as of the date of the ordinance creating this chapter and this chapter is not intended to, nor does it, protect any of the above described persons from arrest or prosecution under those federal laws. Owners, operators and licensees must assume any and all risk and any and all liability that may arise or result under state and federal criminal laws from operation of a medical marijuana dispensary. Further, to the fullest extent permitted by law, any actions taken under the provisions of this section by any public officer or employee of the County of Los Angeles or the County of Los Angeles itself, shall not become a personal liability of such person or liability of the county. (Ord. 2006-0036 § 3 (part), 2006.)



City of Huntington Beach Planning Department

STAFF REPORT

TO:

Planning Commission

FROM:

Scott Hess, AICP, Director of Planning

BY:

Ricky Ramos, Associate Planner

DATE:

August 14, 2007

SUBJECT:

ZONING TEXT AMENDMENT NO. 07-003 (MEDICAL MARIJUANA

DISPENSARIES)

APPLICANT: City of Huntington Beach, 2000 Main St, Huntington Beach, CA 92648

LOCATION: Industrial Districts Citywide

STATEMENT OF ISSUE:

Zoning Text Amendment No. 07-003 request:

- Amend Chapters 204 and 212 of the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) to delete all references to medical marijuana dispensaries.
- Staff's Recommendation:

Approve Zoning Text Amendment No. 07-003 based upon the following:

- Zoning Text Amendment will allow the HBZSO to be consistent with federal law, which considers medical marijuana dispensaries illegal.
- Approval of the request will not affect land use compatibility and will not change the development standards in the IG and IL zoning districts.

RECOMMENDATION:

Motion to:

"Approve Zoning Text Amendment No. 07-003 with findings (Attachment No. 1) and forward to the City Council for adoption."

ALTERNATIVE ACTION(S):

The Planning Commission may take alternative actions such as:

- A. "Deny Zoning Text Amendment No. 07-003 with findings for denial."
- B. "Continue Zoning Text Amendment No. 07-003 and direct staff accordingly."

PROJECT PROPOSAL:

Zoning Text Amendment No. 07-003 represents a request to amend Chapters 204 and 212 of the HBZSO to delete all references to medical marijuana dispensaries pursuant to Chapter 247 of the HBZSO.

This zoning text amendment is being initiated pursuant to an H-Item from Mayor Coerper, which was approved by the City Council in July 2005 (see Attachment No. 5).

In March 2005 the City Council adopted Ordinance No. 3703 permitting medical marijuana dispensaries in the IG (General Industrial) and IL (Limited Industrial) zoning districts of the city subject to additional requirements. A recent federal decision has affirmed once more that even where an individual appropriately adheres to California law under Proposition 215 (Compassionate Use Act), he or she may be prosecuted under federal law for the use, possession, or distribution of marijuana. Therefore, this zoning text amendment proposes to delete all references to medical marijuana dispensaries from the HBZSO (see Attachment Nos. 2.6-2.7, 2.13, 2.20-2.21) to be consistent with recent case law. Attachment No. 4 to this report is a Request for City Council Action from the City Attorney which provides more legal background information relating to the request.

ISSUES:

Subject Property And Surrounding Land Use, Zoning And General Plan Designations:

LOCATION	GENERAL PLAN	ZONING	LAND USE
Citywide	I (Industrial)	IG (General Industrial), IL	Industrial
		(Limited Industrial)	

The proposed zoning text amendment affects properties with a General Plan Land Use Map designation of Industrial. The proposal is consistent with the Industrial designation and the goals and objectives of the City's General Plan by deleting all references to medical marijuana dispensaries while continuing to allow typical industrial uses such as manufacturing and warehousing.

Zoning Compliance: Not applicable.

Urban Design Guidelines Conformance: Not applicable.

Environmental Status:

The request is categorically exempt pursuant to City Council Resolution No. 4501, Class 20 which states that minor amendments to zoning ordinances that do not change the development standards, intensity, or density of such districts are exempt from further environmental review.

<u>Coastal Status</u>: The request will require a Local Coastal Program Amendment certified by the California Coastal Commission.

Redevelopment Status: Not applicable.

Design Review Board: Not applicable.

Subdivision Committee: Not applicable.

Other Departments Concerns and Requirements: Not applicable.

Public Notification:

Legal notice was published in the Huntington Beach/Fountain Valley Independent on August 2, 2007, and notices were sent to individuals/organizations requesting notification (Planning Department's Notification Matrix). As of August 7, 2007 no communication supporting or opposing the request has been received.

Application Processing Dates:

DATE OF COMPLETE APPLICATION: MANDATORY PROCESSING DATE(S):

Not applicable Legislative Action – Not Applicable

ANALYSIS:

The request is a housekeeping item and presents minimal planning issues. Approval of the request will not affect land use compatibility and will not change the development standards in the IG and IL zoning districts. Staff recommends approval because it will bring the HBZSO into conformance with federal law, which considers medical marijuana dispensaries illegal.

ATTACHMENTS:

- 1. Suggested Findings for Approval ZTA No. 07-003
- 2. Legislative Draft of Chapters 204 and 212 of the HBZSO
- 3. Ordinance Amending Chapters 204 and 212 of the HBZSO
- 4. Request for City Council Action from City Attorney
- 5. Minutes of July 18, 2005 City Council Meeting

SH:MBB:RR:sh

ATTACHMENT NO. 1

SUGGESTED FINDINGS FOR APPROVAL

ZONING TEXT AMENDMENT NO. 07-003

SUGGESTED FINDINGS FOR PROJECTS EXEMPT FROM CEQA:

The Planning Commission finds that the project will not have any significant effect on the environment and is exempt from the provisions of the California Environmental Quality Act (CEQA) pursuant to City Council Resolution No. 4501, Class 20 which states that minor amendments to zoning ordinances that do not change the development standards, intensity, or density of such districts are exempt from further environmental review.

SUGGESTED FINDINGS FOR APPROVAL - ZONING TEXT AMENDMENT NO. 07-003:

- 1. Zoning Text Amendment No. 07-003 to delete all references to medical marijuana dispensaries from the Huntington Beach Zoning and Subdivision Ordinance (HBZSO) is consistent with the objectives, policies, general land uses and programs specified in the General Plan. The proposed zoning text amendment affects properties with a General Plan Land Use Map designation of Industrial. The proposal is consistent with the Industrial designation and the goals and objectives of the City's General Plan by deleting all references to medical marijuana dispensaries while continuing to allow typical industrial uses such as manufacturing and warehousing.
- 2. In the case of a general land use provision, Zoning Text Amendment No. 07-003 is compatible with the uses authorized in, and the standards prescribed for, the zoning district for which it is proposed because it involves only the deletion of all references to medical marijuana dispensaries from the HBZSO. The other land uses and development standards identified in the IG and IL zoning districts will remain unchanged.
- 3. A community need is demonstrated for the change proposed. Zoning Text Amendment No. 07-003 will delete all references to medical marijuana dispensaries from the HBZSO consistent with case law and federal law.
- 4. Its adoption will be in conformity with public convenience, general welfare and good zoning practice. Approval of Zoning Text Amendment No. 07-003 will ensure that medical marijuana dispensaries, which are deemed illegal under federal law, are not allowed in the city.

PC Staff Report – 08/14/07 Attachment No. 1.1



LEGISLATIVE DRAFT

Chapter 204 Use Classifications

(3334-6/97, 3378-2/98, 3521-2/02, 3568-9/02, 3669-12/04, Emergency Ord. 3703-3/05, 3724-02/06, 3757-1/07)

Sections:

Applicability
Uses Not Classified
Residential Use Classifications
Public and Semipublic Use Classifications
Commercial Use Classifications
Industrial Use Classifications
Accessory Use Classifications
Temporary Use Classifications

204.02 **Applicability**

Use classifications describe one or more uses having similar characteristics, but do not list every use or activity that may appropriately be within the classification. The Director shall determine whether a specific use shall be deemed to be within one or more use classifications or not within any classification in this Title. The Director may determine that a specific use shall not be deemed to be within a classification, if its characteristics are substantially different than those typical of uses named within the classification. The Director's decision may be appealed to the Planning Commission. (3334-6/97)

204.04 **Uses Not Classified**

Any new use, or any use that cannot be clearly determined to be in an existing use classification, may be incorporated into the zoning provisions by a Zoning and Subdivision Ordinance text amendment, as provided in Chapter 247. Such an incorporation shall not be effective unless certified by the Coastal Commission as a Local Coastal Program amendment. (3334-6/97)

204.06 **Residential Use Classifications**

- Day Care, Limited (or Small-Family). Non-medical care and supervision of six or A. fewer persons, or eight or fewer persons if two of the persons are six years of age or older, on a less than 24-hour basis. Children under the age of 10 years who reside in the home shall be counted for purposes of these limits. This classification includes nursery schools, preschools, and day-care centers for children and adults. (3334-6/97,3669-12/04)
- B. Group Residential. Shared living quarters without separate kitchen or bathroom facilities for each room or unit. This classification includes boarding houses, but excludes residential hotels or motels. (3334-6/97)
- Multifamily Residential. Two or more dwelling units on a site. This classification C. includes manufactured homes. (3334-6/97)
- Residential Alcohol Recovery, Limited. Twenty-four-hour care for no more than D. six persons suffering from alcohol problems in need of personal services,

- supervision, protection or assistance. This classification includes only those facilities licensed by the State of California. (3334-6/97)
- E. <u>Residential Care, Limited</u>. Twenty-four-hour non-medical care for 6 or fewer persons in need of personal services, supervision, protection, or assistance essential for sustaining the activities of daily living. This classification includes only those services and facilities licensed by the State of California. (3334-6/97)
- F. <u>Single-Family Residential</u>. Buildings containing one dwelling unit located on a single lot. This classification includes manufactured homes. (3334-6/97)

204.08 Public and Semipublic Use Classifications

- A. <u>Cemetery</u>. Land used or intended to be used for the burial of human remains and dedicated for cemetery purposes. Cemetery purposes include columbariums, crematoriums, mausoleums, and mortuaries operated in conjunction with the cemetery, business and administrative offices, chapels, flower shops, and necessary maintenance facilities. (3334-6/97)
- B. <u>Clubs and Lodges</u>. Meeting, recreational, or social facilities of a private or nonprofit organization primarily for use by members or guests. This classification includes union halls, social clubs and youth centers. (3334-6/97)
- C. <u>Community and Human Service Facilities</u>.
 - 1. <u>Drug Abuse Centers</u>. Facilities offering drop-in services for persons suffering from drug abuse, including treatment and counseling without provision for on-site residence or confinement. (3334-6/97)
 - 2. <u>Primary Health Care</u>. Medical services, including clinics, counseling and referral services, to persons afflicted with bodily or mental disease or injury without provision for on-site residence or confinement. (3334-6/97)
 - 3. <u>Emergency Kitchens</u>. Establishments offering food for the "homeless" and others in need. (3334-6/97)
 - 4. <u>Emergency Shelters</u>. Establishments offering food and shelter programs for "homeless" people and others in need. This classification does not include facilities licensed for residential care, as defined by the State of California, which provide supervision of daily activities. (3334-6/97)
 - 5. Residential Alcohol Recovery, General. Facilities providing 24-hour care for more than six persons suffering from alcohol problems, in need of personal services, supervision, protection or assistance. These facilities may include an inebriate reception center as well as facilities for treatment, training, research, and administrative services for program participants and employees. This classification includes only those facilities licensed by the State of California. (3334-6/97)
 - 6. Residential Care, General. Twenty-four-hour non-medical care for seven or more persons, including wards of the juvenile court, in need of personal services, supervision, protection, or assistance essential for sustaining the activities of daily living. This classification includes only those facilities licensed by the State of California.

 (3334-6/97)

- D. <u>Convalescent Facilities</u>. Establishments providing care on a 24-hour basis for persons requiring regular medical attention, but excluding facilities providing surgical or emergency medical services. (3334-6/97)
- E. <u>Cultural Institutions</u>. Nonprofit institutions displaying or preserving objects of interest in one or more of the arts or sciences. This classification includes libraries, museums, and art galleries. (3334-6/97)
- F. <u>Day Care, Large-Family</u>. Non-medical care and supervision for 7 to 12 persons, or up to 14 persons if two of the persons are six years of age or older on a less than 24-hour basis. Children under the age of 10 years who reside in the home shall be counted for purposes of these limits.

 (3334-6/97,3669-12/04)
- G. <u>Day Care, General</u>. Non-medical care for 13 or more persons on a less than 24-hour basis. This classification includes nursery schools, preschools, and day-care centers for children or adults. (3334-6/97, 3669-12/04)
- H. <u>Emergency Health Care</u>. Facilities providing emergency medical service with no provision for continuing care on an inpatient basis. (3334-6/97)
- I. <u>Government Offices</u>. Administrative, clerical, or public contact offices of a government agency, including postal facilities, together with incidental storage and maintenance of vehicles. (3334-6/97)
- J. <u>Heliports</u>. Pads and facilities enabling takeoffs and landings by helicopter. (3334-6/97)
- K. <u>Hospitals</u>. Facilities providing medical, surgical, psychiatric, or emergency medical services to sick or injured persons, primarily on an inpatient basis. This classification includes incidental facilities for out-patient treatment, as well as training, research, and administrative services for patients and employees. (3334-6/97)
- L. <u>Maintenance and Service Facilities</u>. Facilities providing maintenance and repair services for vehicles and equipment, and materials storage areas. This classification includes corporation yards, equipment service centers, and similar facilities. (3334-6/97)
- M. Marinas. A boat basin with docks, mooring facilities, supplies and equipment for small boats. (3334-6/97)
- N. <u>Park and Recreation Facilities</u>. Noncommercial parks, playgrounds, recreation facilities, and open spaces. (3334-6/97)
- O. <u>Public Safety Facilities</u>. Facilities for public safety and emergency services, including police and fire protection. (3334-6/97)
- P. Religious Assembly. Facilities for religious worship and incidental religious education, but not including private schools as defined in this section. (3334-6/97)
- Q. Schools, Public or Private. Educational institutions having a curriculum comparable to that required in the public schools of the State of California.

 (3334-6/97)
- R. <u>Utilities, Major</u>. Generating plants, electrical substations, above-ground electrical transmission lines, switching buildings, refuse collection, transfer, recycling or disposal facilities, flood control or drainage facilities, water or wastewater

- treatment plants, transportation or communications utilities, and similar facilities of public agencies or public utilities. (3334-6/97)
- S. Utilities, Minor. Utility facilities that are necessary to support legally established uses and involve only minor structures such as electrical distribution lines, underground water and sewer lines, and recycling and collection containers. (3334-

204.10 **Commercial Use Classifications**

Ambulance Services. Provision of emergency medical care or transportation. Α. including incidental storage and maintenance of vehicles as regulated by Chapter 5.20. (3334-6/97, 3378-2/98)

B. Animal Sales and Services.

- 1. Animal Boarding. Provision of shelter and care for small animals on a commercial basis. This classification includes activities such as feeding, exercising, grooming, and incidental medical care, and kennels. (3334-6/97)
- 2. Animal Grooming. Provision of bathing and trimming services for small animals on a commercial basis. This classification includes boarding for a maximum period of 48 hours. (3334-6/97)
- 3. Animal Hospitals. Establishments where small animals receive medical and surgical treatment. This classification includes only facilities that are entirely enclosed, soundproofed, and air- conditioned. Grooming and temporary (maximum 30 days) boarding of animals are included, if incidental to the hospital use. (3334-6/97)
- 4. Animals: Retail Sales. Retail sales and boarding of small animals, provided such activities take place within an entirely enclosed building. This classification includes grooming, if incidental to the retail use, and boarding of animals not offered for sale for a maximum period of 48 hours. (3334-6/97)
- 5. Equestrian Centers. Establishments offering facilities for instruction in horseback riding, including rings, stables, and exercise areas. (3334-6/97)
- 6. Pet Cemetery. Land used or intended to be used for the burial of animals, ashes or remains of dead animals, including placement or erection of markers, headstones or monuments over such places of burial. (3334-6/97)
- C. Artists' Studios. Work space for artists and artisans, including individuals practicing one of the fine arts or performing arts, or skilled in an applied art or craft. (3334-6/97)
- Banks and Savings and Loans. Financial institutions that provide retail banking D. services to individuals and businesses. This classification includes only those institutions engaged in the on-site circulation of cash money. It also includes businesses offering check-cashing facilities. (3334-6/97, 3378-2/98)
 - 1. With Drive-up Service. Institutions providing services accessible to persons who remain in their automobiles. (3334-6/97)
- E. Building Materials and Services. Retailing, wholesaling, or rental of building supplies or equipment. This classification includes lumber yards, tool and equipment sales or rental establishments, and building contractors' yards, but

excludes establishments devoted exclusively to retail sales of paint and hardware, and activities classified under <u>Vehicle/Equipment Sales and Services</u>. (3334-6/97, 3378-2/98)

- F. <u>Catering Services</u>. Preparation and delivery of food and beverages for off-site consumption without provision for on-site pickup or consumption. (See also <u>Eating and Drinking Establishments</u>.) (3334-6/97, 3378-2/98)
- G. <u>Commercial Filming</u>. Commercial motion picture or video photography at the same location more than six days per quarter of a calendar year. (See also Chapter 5.54, Commercial Photography) (3334-6/97, 3378-2/98)
- H. Commercial Recreation and Entertainment. Provision of participant or spectator recreation or entertainment. This classification includes theaters, sports stadiums and arenas, amusement parks, bowling alleys, billiard parlors and poolrooms as regulated by Chapter 9.32; dance halls as regulated by Chapter 5.28; ice/roller skating rinks, golf courses, miniature golf courses, scale-model courses, shooting galleries, tennis/racquetball courts, health/fitness clubs, pinball arcades or electronic games centers, cyber café having more than 4 coin-operated game machines as regulated by Chapter 9.28; card rooms as regulated by Chapter 9.24; and fortune telling as regulated by Chapter 5.72. (3334-6/97, 3378-2/98, 3669-12/04)
 - 1. <u>Limited</u>. Indoor movie theaters, game centers and performing arts theaters and health/fitness clubs occupying less than 2,500 square feet. (3334-6/97)
- I. <u>Communications Facilities</u>. Broadcasting, recording, and other communication services accomplished through electronic or telephonic mechanisms, but excluding Utilities (Major). This classification includes radio, television, or recording studios; telephone switching centers; telegraph offices; and wireless communication facilities. (3334-6/97, 3378-2/98, 3568-9/02)
- J. <u>Eating and Drinking Establishments</u>. Businesses serving prepared food or beverages for consumption on or off the premises. (3334-6/97, 3378-2/98)
 - 1. With Fast-Food or Take-Out Service. Establishments where patrons order and pay for their food at a counter or window before it is consumed and may either pick up or be served such food at a table or take it off-site for consumption. (3334-6/97)
 - a. <u>Drive-through</u>. Service from a building to persons in vehicles through an outdoor service window. (3334-6/97)
 - b. <u>Limited</u>. Establishments that do not serve persons in vehicles or at a table. (3334-6/97)
 - 2. With Live Entertainment/Dancing. An eating or drinking establishment where dancing and/or live entertainment is allowed. This classification includes nightclubs subject to the requirements of Chapter 5.44 of the Municipal Code. (3334-6/97)
- K. <u>Food and Beverage Sales</u>. Retail sales of food and beverages for off-site preparation and consumption. Typical uses include groceries, liquor stores, or delicatessens. Establishments at which 20 percent or more of the transactions are sales of prepared food for on-site or take-out consumption shall be classified as <u>Catering Services</u> or <u>Eating and Drinking Establishments</u>. (3334-6/97, 3378-2/98)

- 1. With Alcoholic Beverage Sales. Establishments where more than 10 percent of the floor area is devoted to sales, display and storage of alcoholic beverages. (3334-6/97)
- L. Food Processing. Establishments primarily engaged in the manufacturing or processing of food or beverages for human consumption and wholesale distribution. (3334-6/97, 3378-2/98)
- M. Funeral and Interment Services. Establishments primarily engaged in the provision of services involving the care, preparation or disposition of human dead other than in cemeteries. Typical uses include crematories, columbariums, mausoleums or mortuaries. (3334-6/97, 3378-2/98)
- N. Horticulture. The raising of fruits, vegetables, flowers, trees, and shrubs as a commercial enterprise. (3334-6/97, 3378-2/98)
- O. <u>Laboratories</u>. Establishments providing medical or dental laboratory services; or establishments with less than 2,000 square feet providing photographic, analytical, or testing services. Other laboratories are classified as Limited Industry. (3334-6/97, 3378-2/98)
- Ρ. Maintenance and Repair Services. Establishments providing appliance repair, office machine repair, or building maintenance services. This classification excludes maintenance and repair of vehicles or boats; see (Vehicle/Equipment Repair). (3334-6/97)
- Q. Marine Sales and Services. Establishments providing supplies and equipment for shipping or related services or pleasure boating. Typical uses include chandleries, yacht brokerage and sales, boat yards, boat docks, and sail-making lofts. (3334-6/97, 3378-2/98)

RESERVED. R.

Medical Marijuana Dispensary or Dispensary. Any facility or location where medical marijuana is made available to and/or distributed by or to three or more of the following: a primary caregiver, a qualified patient, or a person with an identification card, in strict accordance with California Health and Safety Code Section 11362.5 et seq. A "medical marijuana dispensary" shall not include the following uses, as long as the location of such uses are otherwise regulated by this Code or applicable law: (3703-3/05)

- 1. A clinic licensed pursuant to Chapter 1 of Division 2 of the Health and Safety Code: (3703-3/05)
- 2. A health care facility licensed pursuant to Chapter 2 of Division 2 of the Health and Safety Code; (3703-3/05)
- 3. A residential care facility for persons with chronic life threatening illness licensed pursuant to Chapter 3.01 of Division 2 of the Health and Safety Code: (3703-3/05)
- A residential care facility for the elderly licensed pursuant to Chapter 3.2 of Division 2 of the Health and Safety Code: (3703 3/05)
- 5. A residential hospice, or (3703-3/05)
- A home health agency licensed pursuant to Chapter 8 of Division 2 of the Health and Safety Code, as long as any such use complies strictly with

applicable law including, but not limited to, Health and Safety Code Section 11362.5 et seq. (3703 3/05)

- S. <u>Nurseries</u>. Establishments in which all merchandise other than plants is kept within an enclosed building or a fully screened enclosure, and fertilizer of any type is stored and sold in package form only. (3334-6/97, 3378-2/98)
- T. Offices, Business and Professional. Offices of firms or organizations providing professional, executive, management, or administrative services, such as architectural, engineering, graphic design, interior design, real estate, insurance, investment, legal, veterinary, and medical/dental offices. This classification includes medical/dental laboratories incidental to an office use, but excludes banks and savings and loan associations.

 (3334-6/97, 3378-2/98)
- U. <u>Pawn Shops</u>. Establishments engaged in the buying or selling of new or secondhand merchandise and offering loans secured by personal property and subject to Chapter 5.36 of the Municipal Code.

 (3334-6/97, 3378-2/98)
- V. <u>Personal Enrichment Services</u>. Provision of instructional services or facilities, including photography, fine arts, crafts, dance or music studios, driving schools, business and trade schools, and diet centers, reducing salons, fitness studios, yoga or martial arts studios, and massage in conjunction with Personal Services business.

 (3334-6/97, 3378-2/98, 3669-12/04)
- W. <u>Personal Services</u>. Provision of recurrently needed services of a personal nature. This classification includes barber and beauty shops, seamstresses, tailors, shoe repair shops, dry-cleaning businesses (excluding large-scale bulk cleaning plants), photo-copying, and self-service laundries.

 (3334-6/97, 3378-2/98)
- X. Research and Development Services. Establishments primarily engaged in industrial or scientific research, including limited product testing. This classification includes electron research firms or pharmaceutical research laboratories, but excludes manufacturing, except of prototypes, or medical testing and analysis. (3334-6/97, 3378-2/98)
- Y. Retail Sales. The retail sale of merchandise not specifically listed under another use classification. This classification includes department stores, drug stores, clothing stores, and furniture stores, and businesses retailing the following goods: toys, hobby materials, handcrafted items, jewelry, cameras, photographic supplies, medical supplies and equipment, electronic equipment, records, sporting goods, surfing boards and equipment, kitchen utensils, hardware, appliances, antiques, art supplies and services, paint and wallpaper, carpeting and floor covering, office supplies, bicycles, and new automotive parts and accessories (excluding service and installation).

 (3334-6/97, 3378-2/98)
- Z. <u>Secondhand Appliances and Clothing Sales</u>. The retail sale of used appliances and clothing by secondhand dealers who are subject to Chapter 5.36. This classification excludes antique shops primarily engaged in the sale of used furniture and accessories other than appliances, but includes junk shops. (3334-6/97, 3378-2/98)

- AA <u>Sex Oriented Businesses</u>. Establishments as regulated by Chapter 5.70; baths, sauna baths and massage establishments, as regulated by Chapter 5.24; and figure model studios as regulated by Chapter 5.60. (3378-2/98)
- BB. <u>Swap Meets, Indoor/Flea Markets</u>. An occasional, periodic or regularly scheduled market held within a building where groups of individual vendors offer goods for sale to the public. (3334-6/97)
- CC. <u>Swap Meets, Recurring</u>. Retail sale or exchange of handcrafted or secondhand merchandise for a maximum period of 32 consecutive hours, conducted by a sponsor on a more than twice yearly basis. (3334-6/97)
- DD. <u>Tattoo Establishment</u>. Premises used for the business of marking or coloring the skin with tattoos as regulated by Chapter 8.70. (3334-6/97)
- EE. <u>Travel Services</u>. Establishments providing travel information and reservations to individuals and businesses. This classification excludes car rental agencies. (3334-6/97)
- FF. Vehicle/Equipment Sales and Services.
 - 1. <u>Automobile Rentals</u>. Rental of automobiles, including storage and incidental maintenance, but excluding maintenance requiring pneumatic lifts. (3334-6/97)
 - 2. <u>Automobile Washing</u>. Washing, waxing, or cleaning of automobiles or similar light vehicles. (3334-6/97)
 - 3. <u>Commercial Parking Facility</u>. Lots offering short-term or long-term parking to the public for a fee. (3334-6/97)
 - 4. <u>Service Stations</u>. Establishments engaged in the retail sale of gas, diesel fuel, lubricants, parts, and accessories. This classification includes incidental maintenance and minor repair of motor vehicles, but excluding body and fender work or major repair of automobiles, motorcycles, light and heavy trucks or other vehicles. (3334-6/97)
 - 5. Vehicle/Equipment Repair. Repair of automobiles, trucks, motorcycles, mobile homes, recreational vehicles, or boats, including the sale, installation, and servicing of related equipment and parts. This classification includes auto repair shops, body and fender shops, transmission shops, wheel and brake shops, and tire sales and installation, but excludes vehicle dismantling or salvage and tire retreading or recapping. (3334-6/97)
 - a. <u>Limited</u>. Light repair and sale of goods and services for vehicles, including brakes, muffler, tire shops, oil and lube, and accessory uses, but excluding body and fender shops, upholstery, painting, and rebuilding or reconditioning of vehicles. (3334-6/97)
 - 6. <u>Vehicle/Equipment Sales and Rentals</u>. Sale or rental of automobiles, motorcycles, trucks, tractors, construction or agricultural equipment, manufactured homes, boats, and similar equipment, including storage and incidental maintenance. (3334-6/97)
 - 7. <u>Vehicle Storage</u>. The business of storing or safekeeping of operative and inoperative vehicles for periods of time greater than a 24 hour period, including, but not limited to, the storage of parking tow-aways, impound

yards, and storage lots for automobiles, trucks, buses and recreational vehicles, but not including vehicle dismantling. (3334-6/97, 3757-1/07)

GG. <u>Visitor Accommodations</u>.

- 1. <u>Bed and Breakfast Inns</u>. Establishments offering lodging on a less than weekly basis in a converted single-family or multi-family dwelling or a building of residential design, with incidental eating and drinking service for lodgers only provided from a single kitchen. (3334-6/97)
- 2. <u>Hotels and Motels</u>. Establishments offering lodging on a weekly or less than weekly basis. Motels may have kitchens in no more than 25 percent of guest units, and "suite" hotels may have kitchens in all units. This classification includes eating, drinking, and banquet service associated with the facility. (3334-6/97)
- HH. <u>Warehouse and Sales Outlets</u>. Businesses which store large inventories of goods in industrial-style buildings where these goods are not produced on the site but are offered to the public for sale. (3334-6/97)

II. Quasi Residential

- 1. Residential Hotels. Buildings with 6 or more guest rooms without kitchen facilities in individual rooms, or kitchen facilities for the exclusive use of guests, and which are intended for occupancy on a weekly or monthly basis. (3334-6/97)
- 2. <u>Single Room Occupancy</u>. Buildings designed as a residential hotel consisting of a cluster of guest units providing sleeping and living facilities in which sanitary facilities and cooking facilities are provided within each unit; tenancies are weekly or monthly. (3334-6/97)
- 3. <u>Time-Share Facilities</u>. A facility in which the purchaser receives the right in perpetuity, for life or for a term of years, to the recurrent exclusive use or occupancy of a lot, parcel, unit or segment of real property, annually or on some other periodic basis for a period of time that has been or will be allocated from the use or occupancy periods into which the plan has been divided. A time-share plan may be coupled with an estate in the real property or it may entail a license or contract and/or membership right of occupancy not coupled with an estate in the real property. (3334-6/97)

204.12 Industrial Use Classifications

- A. <u>Industry, Custom</u>. Establishments primarily engaged in on-site production of goods by hand manufacturing involving the use of hand tools and small-scale equipment. (3334-6/97)
 - 1. <u>Small-scale</u>. Includes mechanical equipment not exceeding 2 horsepower or a single kiln not exceeding 8 kilowatts and the incidental direct sale to consumers of only those goods produced on-site. Typical uses include ceramic studios, candle-making shops, and custom jewelry manufacture.

 (3334-6/97)
- B. <u>Industry, General</u>. Manufacturing of products, primarily from extracted or raw materials, or bulk storage and handling of such products and materials. Uses in this classification typically involve a high incidence of truck or rail traffic, and/or

outdoor storage of products, materials, equipment, or bulk fuel. This classification includes chemical manufacture or processing, food processing and packaging, laundry and dry cleaning plants, auto dismantling within an enclosed building, stonework and concrete products manufacture (excluding concrete ready-mix plants), small animal production and processing within an enclosed building, and power generation. (3334-6/97)

- C. <u>Industry, Limited</u>. Manufacturing of finished parts or products, primarily from previously prepared materials; and provision of industrial services, both within an enclosed building. This classification includes processing, fabrication, assembly, treatment, and packaging, but excludes basic industrial processing from raw materials and <u>Vehicle/Equipment Services</u>, but does allow food processing for human consumption. (3334-6/97)
- D. <u>Industry, Research and Development</u>. Establishments primarily engaged in the research, development, and controlled production of high-technology electronic, industrial or scientific products or commodities for sale, but prohibits uses that may be objectionable in the opinion of the Director, by reason of production of offensive odor, dust, noise, vibration, or in the opinion of the Fire Chief by reason of storage of hazardous materials. Uses include aerospace and biotechnology firms, and non-toxic computer component manufacturers. (3334-6/97)

This classification also includes assembly, testing and repair of components, devices, equipment, systems, parts and components such as but not limited to the following: coils, tubes, semi-conductors; communication, navigation, guidance and control equipment; data processing equipment; filing and labeling machinery; glass edging and silvering equipment; graphics and art equipment; metering equipment; optical devices and equipment; photographic equipment; radar, infrared and ultraviolet equipment; radio and television equipment. (3334-6/97)

This classification also includes the manufacture of components, devices, equipment, parts and systems which includes assembly, fabricating, plating and processing, testing and repair, such as but not limited to the following: machine and metal fabricating shops, model and spray painting shops, environmental test, including vibration analysis, cryogenics, and related functions, plating and processing shops, nuclear and radioisotope. (3334-6/97)

This classification also includes research and development laboratories including biochemical and chemical development facilities for national welfare on land, sea, or air; and facilities for film and photography, metallurgy; pharmaceutical, and medical and x-ray research (3334-6/97)

E. <u>Wholesaling, Distribution and Storage</u>. Storage and distribution facilities without sales to the public on-site or direct public access except for recycling facilities and public storage in a small individual space exclusively and directly accessible to a specific tenant. This classification includes mini-warehouses. (3334-6/97)

204.14 Accessory Use Classifications

Accessory Uses and Structures. Uses and structures that are incidental to the principal permitted or conditionally permitted use or structure on a site and are customarily found on the same site. This classification includes detached or attached garages, home occupations, caretakers' units, and dormitory type housing for industrial commercial workers employed on the site, and accessory dwelling units. (3334-6/97)

204.16 Temporary Use Classifications

- A. <u>Animal Shows</u>. Exhibitions of domestic or large animals for a maximum of seven days. (3334-6/97)
- B. <u>Festivals, Circuses and Carnivals.</u> Provision of games, eating and drinking facilities, live entertainment, animal exhibitions, or similar activities in a tent or other temporary structure for a maximum of seven days. This classification excludes events conducted in a permanent entertainment facility. (3334-6/97, 3521-2/02)
- C. <u>Commercial Filming, Limited</u>. Commercial motion picture or video photography at a specific location six or fewer days per quarter of a calendar year. (See also Chapter 5.54, Commercial Photography) (3334-6/97)
- D. <u>Personal Property Sales</u>. Sales of personal property by a resident ("garage sales") for a period not to exceed 48 consecutive hours and no more than once every six months. (3334-6/97)
- E. <u>Real Estate Sales</u>. An office for the marketing, sales, or rental of residential, commercial, or industrial development. This classification includes "model homes." (3334-6/97)
- F. Retail Sales, Outdoor. Retail sales of new merchandise on the site of a legally established retail business for a period not to exceed 96 consecutive hours (four days) no more than once every 3 months. (3334-6/97, 3669-12/04)
- G. <u>Seasonal Sales</u>. Retail sales of seasonal products, including Christmas trees, Halloween pumpkins and strawberries. (3334-6/97)
- H. <u>Street Fairs</u>. Provision of games, eating and drinking facilities, live entertainment, or similar activities not requiring the use of roofed structures. (3334-6/97)
- I. <u>Trade Fairs</u>. Display and sale of goods or equipment related to a specific trade or industry for a maximum period of five days per year. (3334-6/97)
- J. <u>Temporary Event.</u> Those temporary activities located within the coastal zone that do not qualify for an exemption pursuant to Section 245.08.

 (3334-6/97)
- K. <u>Tent Event</u>. Allows for the overflow of any assembly for a period not to exceed 72 consecutive hours and not more than once every 3 months. (3521-2/02, 3724-02/06)

Chapter 212 I Industrial Districts

(3254-10/94, 3378-2/98, 3523-2/02, 3568-9/02, Emergency Ord. 3703-3/21/05, 3708-6/05, 3724-02/06)

Sections:

212.02	Industrial Districts Established
212.04	IG and IL Districts: Land Use Controls
212.06	IG and IL Districts: Development Standards
212.08	Review of Plans

212.02 Industrial Districts Established (3254-10/94)

Two (2) industrial zoning districts are established by this chapter as follows: (3254-10/94)

- A. <u>The IG General Industrial District</u> provides sites for the full range of manufacturing, industrial processing, resource and energy production, general service, and distribution. (3254-10/94)
- B. The IL Limited Industrial District provides sites for moderate- to low-intensity industrial uses, commercial services and light manufacturing. (3254-10/94)

212.04 IG and IL Districts: Land Use Controls (3254-10/94)

In the following schedules, letter designations are used as follows: (3254-10/94)

"P" designates use classifications permitted in the I districts. (3254-10/94)

"L" designates use classifications subject to certain limitations prescribed by the "Additional Provisions" which follow. (3254-10/94)

"PC" designates use classifications permitted on approval of a conditional use permit by the Planning Commission. (3254-10/94)

"ZA" designates use classifications permitted on approval of a conditional use permit by the Zoning Administrator. (3254-10/94)

"TU" designates use classifications allowed upon approval of a temporary use permit by the Zoning Administrator. (3254-10/94)

"P/U" for an accessory use means that the use is permitted on the site of a permitted use, but requires a conditional use permit on the site of a conditional use. (3254-10/94)

Use classifications that are not listed are prohibited. Letters in parentheses in the "Additional Provisions" column refer to requirements following the schedule or located elsewhere in this ordinance. Where letters in parentheses are opposite a use classification heading, referenced provisions shall apply to all use classifications under the heading. (3254-10/94)

IG AND IL DISTRICTS: P - Permitted

LAND USE **CONTROLS** L - Limited (see Additional Provisions)

PC - Conditional use permit approved by Planning Commission ZA - Conditional use permit approved by Zoning Administrator TU - Temporary Use Permit P/U - Requires conditional use permit on site of conditional use

- - Not Permitted

	IG	IL	Additional Provisions
Residential			
Group Residential	PC	PC	(J)
Public and Semipublic			(A)(M)(3708-6/05, 3724-02/06
Community and Ĥuman Service			
Facilities	PC	PC	(L) (3708-6/05, 3724-02/06
Day Care, General	ZA	ZA	(3523-2/02)
Heliports	PC	PC	(O)
Maintenance & Serivce Facilities	ZA	ZA	(3708-6/05)
Public Safety Facilities	P	P	
Religious Assembly	ZA	ZA	(3724-02/06)
Schools, Public or Private	L-6	L-6	
Utilities, Major	PC	PC	
Utilities, Minor	L-7	L-7	(P)
Commercial Uses			(D)(M)
Ambulance Services	ZA	ZA	(D)(W)
Animal Sales and Services	211	271	
Animal Boarding	ZA	ZA	(3523-2/02)
Animal Hospitals	ZA	ZA	
Artists' Studios	P	P	(3523-2/02)
Banks and Savings and Loans	L-1	L-1	
Building Materials and Services	P	P	
Catering Services		P	
Commercial Filming	ZA	ZA	
	ZA	ZA	
Commercial Recreation and	T 0	т О	
Entertainment F. 1111	L-2	L-2	
Communication Facilities	L-12	L-12	(3568-9/02)
Eating & Drinking Establishments	L-3	L-3	
w/Live Entertainment	ZA	ZA	(S)(U) (3523-2/02)
Food & Beverage Sales	ZA	ZA	(3523-2/02)
Hospitals and Medical Clinics		PC	
Laboratories	P	P	
Maintenance & Repair Services	P	P	
Marine Sales and Services	\mathbf{P}	P	
Medical Marijuana Dispensary	P	P	(L-13) (3703-3/05)
Nurseries	P	P	
Offices, Business & Professional	L-1	L-1	(H)

IG AND IL	P - Permitted
DISTRICTS:	L - Limited (see Additional Provisions)
LAND USE	PC - Conditional use permit approved by Planning Commission
CONTROLS	ZA - Conditional use permit approved by Zoning Administrator
	TU - Temporary Use Permit
	P/U - Requires conditional use permit on site of conditional use
	- Not Permitted

	IG	IL	Addi Provi	tional isions
Personal Enrichment	L-9	L-9	(U)	(3523-2/02)
Personal Services	L-1	L-1		
Quasi Residential	PC	PC	(K)	(3708-6/05)
Research & Development Services	P	P		
Sex Oriented Businesses	L-11	L-11		(3378-2/98)
(regulated by HBMC Chapter 5.70)	*			(3378-2/98)
Sex Oriented Businesses	PC	PC	(R)	(3378-2/98)
(regulated by HBMC Chapters 5.24 & 5.60)				(3378-2/98)
Swap Meets, Indoor/Flea Markets	PC	PC	(Q)	
Vehicle/Equipment Sales & Services				
Service Stations	L-4	L-4		grafit.
Vehicle/Equipment Repair	$\overline{\overline{\mathbf{P}}}$	$\bar{\overline{P}}$		
Vehicle/Equip. Sales/Rentals		L-5		
Vehicle Storage	$\tilde{\overline{\mathbf{P}}}$	ZA	(I)	
Visitor Accommodations	ZA	ZA	(-)	(3708-6/05)
Warehouse and Sales Outlets	L-8	L-8		
Industrial (See Chapter 204)			(B)(I	M)(N)
Industry, Custom	P	P		
Industry, General	$ar{\mathbf{P}}$	P		ar e Nagaria
Industry, Limited	$ar{ extbf{P}}$	$\bar{\mathbf{P}}$		
Industry, R & D	$\mathbf{\tilde{P}}$	$\hat{\mathbf{P}}$		
Wholesaling, Distribution & Storage	P	P		
Accessory Uses				
Accessory Uses and Structures	P/U	P/U	(C)	
Temporary Uses				
Commercial Filming, Limited	P	P	(T)	(3523-2/02)
Real Estate Sales	$ar{ extbf{P}}$	P		
				(3
		523-2/02	3708-6/05)	
Trade Fairs	P	P P	(E)	(3708-6/05)
Nonconforming Uses			(F)	

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ORDINANCE	NO.	

IG AND IL Districts: Additional Provisions

L-1 Only allowed upon approval of a conditional use permit by the Zoning Administrator for a mixed use project, subject to the following requirements: (3254-10/94, 3708-6/05)

Minimum site area: 3 acres (3254-10/94)

Maximum commercial space: 35 percent of the gross floor area and 50 percent of the ground floor area of buildings fronting on an arterial highway. (3254-10/94)

<u>Phased development</u>: 25 percent of the initial phase must be designed for industrial occupancy. For projects over 500,000 square feet, the initial phase must include 5 percent of the total amount of industrial space or 50,000 square feet of industrial space, whichever is greater. (3254-10/94)

- L-2 Allowed upon approval of a conditional use permit by the Zoning Administrator when designed and oriented for principal use by employees of the surrounding industrial development or when designed for general public use, after considering vehicular access and parking requirements.

 (3254-10/94, 3708-6/05)
- L-3 Allowed upon approval of a conditional use permit by the Zoning Administrator when in a free-standing structure or as a secondary use in a building provided that no more than 20 percent of the floor area is occupied by such a use. (3254-10/94, 3523-2/02)
- L-4 Only stations offering services primarily oriented to businesses located in an I District are allowed with a conditional use permit by the Planning Commission. (3254-10/94)
- L-5 No new or used automobile, truck or motorcycle retail sales are permitted. (3254-10/94)
- L-6 Only schools offering higher education curriculums are allowed with conditional use permit approval by the Planning Commission. No day care, elementary or secondary schools are permitted. (3254-10/94)
- L-7 Recycling Operations as an accessory use are permitted; recycling operations as a primary use are allowed upon approval of a conditional use permit by the Zoning Administrator. (3254-10/94, 3708-6/05)
- L-8 Allowed upon conditional use permit approval by the Planning Commission when a single building with a minimum area of 100,000 square feet is proposed on a site fronting an arterial. The primary tenant shall occupy a minimum 95% of the floor area and the remaining 5% may be occupied by secondary tenants. (3254-10/94)
- L-9 Permitted if the space is 5,000 square feet or less; allowed by Neighborhood Notification pursuant to Chapter 241 if the space is over 5,000 square feet. (3254-10/94, 3523-2/02,3708-6/05)
- L-10 RESERVED (3254-10/94,3523-2/02, 3724-02/06)

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ORDINANCE	NO.		

IG AND IL Districts:	Additional Provisi	ONS (continued	i)		

L-11 Allowed subject to the following requirements: (3378-2/98)

A. A proposed sex oriented business shall be at least five hundred feet (500') from any residential use, school, park and recreational facility, or any building used for religious assembly (collectively referred to as a "sensitive use") and at least seven hundred fifty feet (750') from another sex oriented business. For purposes of these requirements, all distances shall be measured from the lot line of the proposed sex oriented business to the lot line of the sensitive use or the other sex oriented business. The term "residential use" means any property zoned RL, RM, RMH, RH, RMP, and any properties with equivalent designations under any specific plan. (3378-2/98)

To determine such distances the applicant shall submit for review a straight line drawing depicting the distances from the lot line of the parcel of land on which the sex oriented business is proposed which includes all the proposed parking and: (3378-2/98)

- 1. the lot line of any other sex oriented business within seven hundred fifty feet (750') of the lot line of the proposed sex oriented business; and (3378-2/98)
- 2. the lot line of any building used for religious assembly, school, or park and recreational facility within five hundred (500') feet of the lot line of the proposed sex oriented business; and (3378-2/98)
- 3. the lot line of any parcel of land zoned RL, RM, RMH, RH, and RMP and any parcels of land with equivalent designations under any specific plans within five hundred feet (500') of the lot line of the proposed sex oriented business. (3378-2/98)
- B. The front facade of the building, including the entrance and signage, shall not be visible from any major, primary or secondary arterial street as designated by the Circulation Element of the General Plan adopted May, 1996, with the exception of Argosy Drive. (3378-2/98)
- C. Prior to or concurrently with applying for a building permit and/or a certificate of occupancy for the building, the applicant shall submit application for Planning Department Staff Review of a sex oriented business zoning permit with the drawing described in subsection A, a technical site plan, floor plans and building elevations, and application fee. Within ten (10) days of submittal, the Director shall determine if the application is complete. If the application is deemed incomplete, the applicant may resubmit a completed application within ten (10) days. Within thirty days of receipt of a completed application, the Director shall determine if the application complies with the applicable development and performance standards of the

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IG AND IL Districts: Additional Provisions (cont	tinued)
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Huntington Beach Zoning and Subdivision Ordinance. Said standards include but are not limited to the following: (3378-2/98)

- 1. Chapter 203, Definitions; Chapter 212, Industrial Districts; Chapter 230, Site Standards; Chapter 231, Off-Street Parking & Loading Provisions; Chapter 232, Landscape Improvements; and Chapter 236, Nonconforming Uses and Structures. (3378-2/98)
- 2. Chapter 233.08(b), Signs. Signage shall conform to the standards of the Huntington Beach Zoning and Subdivision Ordinance Code except
 - a. that such signs shall contain no suggestive or graphic language, photographs, silhouettes, drawings, statues, monuments, sign shapes or sign projections, or other graphic representations, whether clothed or unclothed, including without limitation representations that depict "specified anatomical areas" or "specified sexual activities"; and (3378-2/98)
 - b. only the smallest of the signs permitted under Chapter 233.08(b) shall be visible from any major, primary or secondary arterial street, such streets shall be those designated in the Circulation Element of the General Plan adopted May, 1996, with the exception of Argosy Drive.
- 3. Compliance with Huntington Beach Municipal Code Chapter 5.70. (3378-2/98)
- D. The Director shall grant or deny the application for a sex oriented business zoning permit for a sex oriented business. There shall be no administrative appeal from the granting or denial of a permit application thereby permitting the applicant to obtain prompt judicial review. (3378-2/98)
- E. Ten (10) working days prior to submittal of an application for a sex oriented business zoning permit for Staff Review, the applicant shall: (i) cause notice of the application to be printed in a newspaper of general circulation; and (ii) give mailed notice of the application to property owners within one thousand (1000') feet of the proposed location of the sex oriented business; and the City of Huntington Beach, Department of Community Development by first class mail. (3378-2/98)

The notice of application shall include the following: (3378-2/98)

- 1. Name of applicant; (3378-2/98)
- 2. Location of proposed sex oriented business, including street address (if known) and/or lot and tract number; (3378-2/98)
- 3. Nature of the sex oriented business, including maximum height and square footage of the proposed development; (3378-2/98)

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4. The City Hall telephone number for the Department of Community Development to call for viewing plans; (3378-2/98)

IG AND IL Districts: Additional Provisions (continued)

- 5. The date by which any comments must be received in writing by the Department of Community Development. This date shall be ten (10) working days from staff review submittal; and (3378-2/98)
- 6. The address of the Department of Community Development. (3378-2/98)
- F. A sex oriented business may not apply for a variance pursuant to Chapter 241 nor a special sign permit pursuant to Chapter 233. (3378-2/98)
- G. A sex oriented business zoning permit shall become null and void one year after its date of approval unless: (3378-2/98)
 - 1. Construction has commenced or a Certificate of Occupancy has been issued, whichever comes first; or (3378-2/98)
 - 2. The use is established. (3378-2/98)
- H. The validity of a sex oriented business zoning permit shall not be affected by changes in ownership or proprietorship provided that the new owner or proprietor promptly notifies the Director of the transfer. (3378-2/98)
- I. A sex oriented business zoning permit shall lapse if the exercise of rights granted by it is discontinued for 12 consecutive months. (3378-2/98)
- L-12 For wireless communication facilities see section 230.96 Wireless Communication Facilities. All other communication facilities permitted. (3568-9/02)
- (A) Repealed. (3254-10/94, 3708-6/05)
- (B) A conditional use permit from the Zoning Administrator is required for any new use or enlargement of an existing use, or exterior alterations and additions for an existing use located within 150 feet of an R district. The Director may waive this requirement if there is no substantial change in the character of the use which would affect adjacent residential property in an R District. (3254-10/94)
- (C) Accessory office uses incidental to a primary industrial use are limited to 10 percent of the floor area of the primary industrial use. (3254-10/94)
- (D) Adjunct office and commercial space, not to exceed 25 percent of the floor area of the primary industrial use, is allowed with a conditional use permit from the Zoning Administrator, provided that it is intended primarily to serve employees of the industrial use, no exterior signs advertise the adjunct use, the adjunct use is physically separated from the primary industrial use, any retail sales are limited to goods manufactured on-site, and the primary industrial fronts on an arterial. (3254-10/94)

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(E)	See Section 241.22:	Temporary	Use Permits.	(3254-10/94)
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(F) See Chapter 236: Nonconforming Uses and Structures. (3254-10/94)

IG AND IL Districts: Additional Provisions (continued)

(H) Medical/dental offices, insurance brokerage offices, and real estate brokerage offices, except for on-site leasing offices, are not permitted in any I District. (3254-10/94)

Administrative, management, regional or headquarters offices for any permitted industrial use, which are not intended to serve the public, require a conditional use permit from the Zoning Administrator to occupy more than 10 percent of the total amount of space on the site of the industrial use. (3254-10/94)

- (I) Automobile dismantling, storage and/or impound yards may be permitted subject to the approval of a conditional use permit by the Planning Commission and the following criteria: (3254-10/94)
 - (a) The site shall not be located within 660 feet of an R district. (3254-10/94)
 - (b) All special metal cutting and compacting equipment shall be completely screened from view. (3254-10/94)
 - (c) Storage yards shall be enclosed by a solid 6-inch concrete block or masonry wall not less than 6 feet in height and set back a minimum 10 feet from abutting streets with the entire setback area permanently landscaped and maintained. (3254-10/94)
 - (d) Items stacked in the storage yard shall not exceed the height of the screening walls or be visible from adjacent public streets. (3254-10/94)
- (J) Limited to facilities serving workers employed on-site. (3254-10/94)
- (K) Limited to: Single Room Occupancy uses (See Section 230.46). (3254-10/94,3708-6/05)
- (L) Limited to Emergency Shelters. (3254-10/94)
- (M) Development of vacant land and/or additions of 10,000 square feet or more in floor area; or additions equal to or greater than 50% of the existing building's floor area; or additions to buildings on sites located within 300 feet of a residential zone or use for a permitted use requires approval of a conditional use permit from the Zoning Administrator. The Planning Director may refer any proposed addition to the Zoning Administrator if the proposed addition has the potential to impact residents or tenants in the vicinity (e.g., increased noise, traffic). (3254-10/94, 3523-2/02)
- (N) Major outdoor operations require conditional use permit approval by the Planning Commission. Major outside operations include storage yards and uses utilizing more than 1/3 of the site for outdoor operation. (3254-10/94)
- (O) See Section 230.40: Helicopter Takeoff and Landing Areas. (3254-10/94)

ORDINANCE	NO.		

- (P) See Section 230.44: Recycling Operations. (3254-10/94)
- (Q) See Section 230.50: Indoor Swap Meets/Flea Markets (3254-10/94)
- (R) See L-11(A) relating to locational restrictions. (3254-10/94, 3378-2/98)

IG AND IL Districts: Additional Provisions (continued)

- (S) Non-amplified live entertainment greater than 300 feet from a residential zone or use shall be permitted without a conditional use permit. (3523-2/02)
- (T) Subject to approval by the Police Department, Public Works Department, and Fire Department and the Planning Director. (3523-2/02)
- (U) Neighborhood notification requirements when no entitlement required pursuant to Chapter 241. (3523-2/02, 3708-6/05)
- L-13 Allowed subject to the following requirements: (3703-3/21/05)
- A. A proposed medical marijuana dispensary shall be at least five hundred feet (500') from any residential use, school, park and recreational facility, or any building used for religious assembly (collectively referred to as a "sensitive use") and at least seven hundred fifty feet (750') from another medical marijuana dispensary. For purposes of these requirements, all distances shall be measured from the lot line of the proposed medical marijuana dispensary to the lot line of the sensitive use or the other medical marijuana dispensary. The term "residential use" means any property zoned RL, RM, RMH, RH, RMP, and any properties with equivalent designations under any specific plan. (3703 3/21/05)

To determine such distances the applicant shall submit for review a straight line drawing depicting the distances from the lot line of the parcel of land on which the medical marijuana dispensary is proposed which includes all the proposed parking and: (3703 3/21/05)

- 1. the lot line of any other medical marijuana dispensary within seven hundred fifty feet (750') of the lot line of the medical marijuana dispensary; and (3703-3/21/05)
- 2. the lot line of any building used for religious assembly, school, or park and recreational facility within five hundred (500') feet of the lot line of the medical marijuana dispensary; and (3703-3/21/05)
- 3. the lot line of any parcel of land zoned RL, RM, RMH, RH, and RMP and any parcels of land with equivalent designations under any specific plans within five hundred feet (500') of the lot line of the proposed medical marijuana dispensary. (3703 3/21/05)
- B. Prior to or concurrently with applying for a building permit and/or a certificate of occupancy for the building, the applicant shall submit application for Planning Department Staff Review of a medical marijuana dispensary zoning permit with the drawing described in subsection A, a

ORDINANCE	NO.		

technical site plan, floor plans and building elevations, and application fee. Within ten (10) days of submittal, the Director shall determine if the application is complete. If the application is deemed incomplete, the applicant may resubmit a completed application within ten (10) days. Within thirty days of receipt of a completed application, the Director shall determine if the application complies with the applicable development and performance standards of the Huntington Beach Zoning and Subdivision Ordinance. Said standards include but are not limited to the following: Chapter 203, Definitions; Chapter 212, Industrial Districts; Chapter 230, Site Standards; Chapter 231, Off-Street Parking & Loading Provisions; Chapter 232, Landscape Improvements; and Chapter 236, Nonconforming Uses and Structures. (3703-3/21/05)

- The Director shall grant or deny the application for a medical marijuana dispensary zoning permit for a medical marijuana dispensary. There shall be no administrative appeal from the granting or denial of a permit application thereby permitting the applicant to obtain prompt judicial review. (3703-3/21/05)
- A medical marijuana dispensary may not apply for a variance pursuant to Chapter 241 nor a special sign permit pursuant to Chapter 233. (3703 3/21/05)
- A medical marijuana dispensary zoning permit shall become null and void one year after its date of approval unless: (3703-3/21/05)
 - Construction has commenced or a Certificate of Occupancy has been issued. whichever comes first; or (3703-3/21/05)
 - The use is established. (3703-3/21/05)
- The validity of a medical marijuana dispensary zoning permit shall not be affected by changes in ownership or proprietorship provided that the new owner or proprietor promptly notifies the Director of the transfer. (3703-3/21/05)
- A medical marijuana dispensary zoning permit shall lapse if the exercise of rights granted by it is discontinued for 12 consecutive months. (3703-3/21/05)

212.06 IG AND IL Districts: Development Standards

The following schedule prescribes development standards for the I Districts. The first two columns prescribe basic requirements for permitted and conditional uses in each district. Letters in parentheses in the "Additional Requirements" column reference requirements following the schedule or located elsewhere in this ordinance. In calculating the maximum gross floor area as defined in Chapter 203, the floor area ratio is calculated on the basis of net site area. Fractional numbers shall be rounded down to the nearest whole number. All required setbacks shall be measured from ultimate right-of-way and in accordance with definitions set forth in Chapter 203, Definitions. (3254-10/94)

		IG	IL	Additional Requirements	
Residential Development				(M)	
Nonresidential Development Minimum Lot Area (sq. ft.)		20,000	20,000	(A)(B) (3708-0	06/05)
untington Beach Zoning and Subdivision Ordinance	Chapter 212	•	4	Page 10 of 13	

Minimum Lot Width (ft.)	100	100	(A)(B)
Minimum Setbacks			(A)(C)
Front (ft.)	10;20	10;20	(D)
Side (ft.)	0	15	(E)(F) (3708-06/05)
Street Side (ft.)	10	10	
Rear (ft.)	0	0	(E) (3708-06/05)
Maximum Height of Structures (ft.)	40	40	(G)
Maximum Floor Area Ratio (FAR)	0.75	0.75	
Minimum Site Landscaping (%)	8	8	(H)(I)

	IG IL	Additional Requirements
Fences and Walls	See Section 230.88	
Off-Street Parking and Loading	See Chapter 231	(J)
Outdoor Facilities	See Section 230.74	
Screening of Mechanical Equipment	See Section 230.76	(K)
Refuse Storage Area	See Section 230.78	
Underground Utilities	See Chapter 17.64	
Performance Standards	See Section 230.82	(L)
Nonconforming Uses and Structures	See Chapter 236	
Signs	See Chapter 233	
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IG AND IL Districts: Additional Development Standards

- (A) See Section 230.62: Building Site Required and Section 230.64: Development on Substandard Lots. (3254-10/94)
- (B) Smaller lot dimensions for new parcels may be permitted by the Zoning Administrator with an approved development plan and tentative subdivision map. (3254-10/94)
- (C) See Section 230.68: Building Projections into Yards and Required Open Space. Double-frontage lots shall provide front yards on each frontage. (3254-10/94)
- (D) The minimum front setback shall 10 feet and the average setback 20 feet, except for parcels fronting on local streets where only a 10 foot setback is required. (3254-10/94)
 - All I Districts: An additional setback is required for buildings exceeding 25 feet in height (1 foot for each foot of height) and for buildings exceeding 150 feet in length (1 foot for each 10 feet of building length) up to a maximum setback of 30 feet. (3254-10/94)
- (E) In all I districts, a 15-foot setback is required abutting an R district and no openings in buildings within 45 feet of an R district. (3254-10/94)
- (F) A zero-side yard setback may be permitted in the I districts, but not abutting an R district, provided that a solid wall at the property line is constructed of maintenance-free masonry material and the opposite side yard is a minimum of 30 feet. (3254-10/94)

Exception. The Zoning Administrator or Planning Commission may approve a conditional use permit to allow a 15-foot interior side yards opposite a zero-side yard on one lot, if an abutting

ORDINANCE	NΟ			
CICDILITATION	110.			

side yard at least 15 feet wide is provided and access easements are recorded ensuring a minimum 30-foot separation between buildings. This 30-foot accessway must be maintained free of obstructions and open to the sky, and no opening for truck loading or unloading shall be permitted in the building face fronting on the accessway unless a 45-foot long striped areas is provided solely for loading and unloading entirely within the building. (3254-10/94)

(G) See Section 230.70: Measurement of Height. Within 45 feet of an R district, no building or structure shall exceed a height of 18 feet. (3254-10/94)

IG AND IL Districts: Additional Development Standards (continued)

- (H) Planting Areas. Required front and street-side yards adjacent to a public right-of-way shall be planting areas except for necessary drives and walks. A 6-foot wide planting area shall be provided adjacent to an R district and contain one tree for each 25 lineal feet of planting area. (3254-10/94)
- (I) See Chapter 232: Landscape Improvements. (3254-10/94)
- (J) Truck or rail loading, dock facilities, and the doors for such facilities shall not be visible from or be located within 45 feet of an R district. (3254-10/94)
- (K) See Section 230.80: Antennae. (3254-10/94)
- (L) Noise. No new use shall be permitted, or exterior alterations and/or additions to an existing use allowed, within 150 feet of an R district until a report prepared by a California state-licensed acoustical engineer is approved by the Director. This report shall include recommended noise mitigation measures for the industrial use to ensure that noise levels will conform with Chapter 8.40 of the Municipal Code. The Director may waive this requirement for change of use or addition or exterior alteration to an existing use if it can be established that there had been no previous noise offense, that no outside activities will take place, or if adequate noise mitigation measures for the development are provided. (3254-10/94)
- (M) Group residential or accessory residential uses shall be subject to standards for minimum setbacks and height of the RH District. (3254-10/94)

212.08 Review of Plans

All applications for new construction and exterior alterations and additions shall be submitted to the Planning Department for review. Discretionary review shall be required as follows: (3254-10/94,3708-6/05)

- A. <u>Zoning Administrator Review</u>. Projects requiring a conditional use permit from the Zoning Administrator; projects including a zero-side yard exception; projects on substandard lots. (3254-10/94)
- B. <u>Design Review Board</u>. Projects within redevelopment project areas and areas within 500 feet of a PS district; see Chapter 244. (3254-10/94)
- C. <u>Planning Commission</u>. Projects requiring a conditional use permit from the Commission. (3254-10/94)

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ORDINANCE	NO.	

D. <u>Projects in the Coastal Zone</u>. A Coastal Development Permit is required unless the project is exempt; see Chapter 245. (3254-10/94)

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AN ORDINANCE OF THE CITY OF HUNTINGTON BEACH AMENDING CHAPTERS 204 AND 212 OF THE HUNTINGTON BEACH ZONING AND SUBDIVISION ORDINANCE PERTAINING TO MEDICAL MARIJUANA DISPENSARIES

The City Council of the City of Huntington Beach does hereby ordain as follows:

SECTION 1. That language in subsection R of Section 204.10 of the Huntington Beach Zoning and Subdivision Ordinance is hereby deleted. (For clerical purposes the letter "R" has been retained.)

SECTION 2. In Section 212.04 Land Use Controls, reference to Medical Marijuana Dispensary and Provision L-13 are hereby deleted in their entirety.

SECTION 3. This ordinance shall become effective 30 days after its adoption.

	day of, 2007
ATTEST:	Mayor
	INITIATED AND APPROVED AS TO
City Clerk	FORM:

Council/Agency Meet	ing Held:					
Deferred/Continued to	D:					
☐ Approved ☐ Cond	litionally Approved Denied	City Clerk's Signature				
Council Meeting Date	te:	Department ID Number: CA	A 07-26			
	CITY OF HUNTINGT REQUEST FOR CITY CO					
SUBMITTED TO:	Honorable Mayor and City Co	uncil Members				
SUBMITTED BY:	: Jennifer McGrath City Attorney					
PREPARED BY:	Jennifer McGrath, Oity Attorney					
SUBJECT:	SUBJECT: Adoption revising Zoning Code Chapters 204 and 212 as to medical marijuana dispensaries					
Statement of Issue, Funding	Source, Recommended Action, Alternative	Action(s), Analysis, Environmental Status, A	Attachment(s)			
and 212 currently per court rulings, the law medical marijuana distribution of mariju even for medicinal dispensaries violates Huntington Beach.	ermit medical marijuana disper vis now clear that despite Ca initiative, the federal prohibi uana applies to persons poss lipurposes. Consequently, sifederal law and, as such, this	nd Subdivision Ordinance Chansaries within the City. In light lifornia's adoption of Proposition tion against the possession, essing, using, and distributing the operation of medical use should not be permitted in the Zoning and Subdivision Ordes.	of recent n 215, the use, and marijuana marijuana the City of			
Funding Source:	No funds are required					
	each Amending Chapters 204	ance No An Ordina and 212 of the Zoning Code Pe				

<u>Analysis</u>: In March of 2005, the City Council adopted Ordinance No. 3703, permitting medical marijuana dispensaries in specified locations within the City. At the time of adoption of the ordinance, a Supreme Court decision was pending in a case that challenged the applicability of Proposition 215 (the Compassionate Use Act) as it relates to the Federal Controlled Substances Act ("FCSA"). In June of 2005, the United States Supreme Court issued its opinion in this case, *Gonzales v. Raich* (2005) 545 U.S. 1, upholding the enforcement of the FCSA. The Court held that Congress could regulate and even ban the use of marijuana under the Commerce Clause. In other words, the possession and

Alternative Action(s): Do not adopt Ordinance No. ___

distribution of marijuana is sull a federal crime. However, at this time, the *Raich* case had been remanded to the Ninth Circuit to address the plaintiff's remaining claims that she was entitled to possess and use medical marijuana based on, amongst other things, rights afforded to her under the United States Constitution. This eagerly anticipated decision, which was just filed on March 14, 2007, held that the application of the FCSA to medical marijuana growers and users did not violate substantive due process guarantees, as the use of medical marijuana was not a fundamental right. It also held that the plaintiff failed to demonstrate a likelihood of success on her claim that the FCSA, as applied to prevent the use of marijuana under California's Compassionate Use Act, violated the Tenth Amendment. (*Gonzales v. Raich*, 2007 WL 754759, 12.)

This recent federal decision has affirmed once more that even where an individual appropriately adheres to California law under Proposition 215, he or she may be prosecuted under federal law for the use, possession, or distribution of marijuana. At this time, only Congressional action can resolve the conflict between state and federal law regarding the use of marijuana for medicinal purposes. Not only do these federal decisions place law enforcement in a precarious position between enforcement of state and federal law, the City itself is in an untenable position based on its ordinance permitting medical marijuana dispensaries.

Permitting these dispensaries has implications under the FCSA as well as certain provisions of the Huntington Beach Municipal Code ("HBMC"). HBZSO Chapters 204 and 212 allow for medical marijuana dispensaries uses subject to specific location criteria. However, based on the *Raich* decisions, the issuance of a zoning permit for a medical marijuana dispensary would be considered the issuance of a permit for an illegal use. Further, under HBMC Section 5.04.050, the City is prohibited from issuing a business license for a use that is illegal under state or federal law.

Lastly, the City has recently taken the position that it should not be required to violate federal law by returning medical marijuana to criminal defendants. The City has recently successfully challenged two court orders that required the City to return medical marijuana to criminal defendants. It is also the Real Party in a case on this same issue that is currently pending before the Appellate Court, *Spray v. Superior Court*, and has provided *amicus curiae* support to the City of Garden Grove in *Spray's* companion case, *City of Garden Grove v. Superior Court*. Permitting medical marijuana dispensaries to operate within the City is inconsistent with the City's position in these cases.

It should be noted that some cities that do not permit the operation of medical marijuana dispensaries, such as Dublin, Fremont, and Auburn, have elected to expressly prohibit this type of use through the adoption of municipal codes specifically tailored towards medical marijuana dispensaries. Although the City may adopt a similar ordinance if it so chooses, it is the City's standard practice to regulate by permitting uses, rather than by express prohibition. Even without an ordinance expressly prohibiting the operation of medical marijuana dispensaries, the City can regulate this illegal use under HBMC 5.04.050, its business license ordinance.

REQUEST FOR CITY COUNCIL ACTION

MEETING DATE:

DEPARTMENT ID NUMBER: CA 07-26

<u>Strategic Plan Goal</u>: Preserve the quality of our neighborhoods, maintain open space, and provide for the preservation of historic neighborhoods.

Environmental Status: N/A

Attachment(s):

City Clerk's Page Number	No.	Description
	1.	An Ordinance of the City Council of the City of Huntington Beach Amending Zoning Gode Chapters 202 and 212 Pertaining to Medical Marijuana Dispensaries.
	2.	Legislative Drafts of Zoning Gode Chapters 202 and 212.

A motion was made by Coerper, second Bohr to:

1. OPPOSE – HR 2726 (Sessions) Preserving Innovation in Telecom Act of 2005 as Introduced

and

2. OPPOSE – SB 399 (Escutia) Health Services – 3rd Party Liability as amended on 06/21/05

and

3. OPPOSE – SB 1059 (Escutia) Electric Transpaission Corridors – as amended on 05/27/05

The motion carried by the following roll call vote:

AYES:

Hansen, Coerper, Sullivan, Hardy, Green, Bohr, Cook

NOES: None ABSENT: None

A motion was made by Cook, second Bohr to SUPPORT – SB 1 (Murray) Energy: Renewable

Sources (the Million Solar Roofs Initiative as amended on 06/23/05.) The motion carried by the following roll call vote:

AYES: Hansen, Coerper, Hardy, Bohr, Cook

NOES: Sullivan, Green

ABSENT: None

(City Council) Directed Staff to Prepare an Ordinance Amending Chapters 204 and 212 of the Huntington Beach Zoning and Subdivision Ordinance to Prohibit Medical Marijuana Dispensaries (Ordinance 3703 was Adopted March 21, 2005) (120.90)

The City Council considered a communication from Councilmember Coerper transmitting the following **Statement of Issue:** Earlier this year there were several meetings with city staff and members of the City Council exploring whether or not the city of Huntington Beach should permit medical marijuana dispensaries in the city of Huntington Beach consistent with the Compassionate Use Act (Proposition 215). In March of this year, Council adopted Ordinance No. 3703, which permits medical marijuana dispensaries in specified locations. At the time of adoption of the ordinance, a Supreme Court decision was still pending in a case that challenged the applicability of Proposition 215 as it relates to the Federal Controlled Substances Act.

In June 2005, the Supreme Court of the United States issued its opinion in *Gonzalez v. Raich*, which upholds enforcement of the Federal Controlled Substances Act. In other words, possession of marijuana is still a federal crime.

In view of this decision of the Supreme Court, the city should process a zoning text amendment to disallow for uses that are in violation of federal law. For the city to continue to allow medical marijuana dispensaries could be viewed by federal authorities as aiding or abetting the commission of a felony or conspiracy to violate the law.

Councilmember Coerper reported orally and asked for an update on the ordinance. City Attorney Jennifer McGrath and Police Chief Ken Small reported on the local ordinance as it relates to state and federal legislation.

Council discussion followed regarding the state initiative process and the process of modifying the City's zoning code by ordinance.

Councilmember Cook stated reasons for opposing the recommended action, including the benefits offered by the medicine and faulty reasoning to prohibit its use.

Councilmember Hansen stated his support for the recommended action, citing unintended results of Proposition 215.

Councilmember Bohr inquired if any applications for dispensaries were currently in process. Planning Director Howard Zelefsky responded, stating that there are currently no applications pending, and that one application was denied.

Mayor Hardy stated reasons for opposing the recommended action, including the uses of marijuana as a medicine and her opposition to banning of medicines in Huntington Beach.

A motion was made by Coerper, second Green to direct staff to prepare an ordinance amending Chapters 204.10 and 212.04 to prohibit medical marijuana dispensaries in the city of Huntington Beach. The motion carried by the following roll call vote:

AYES:

Hansen, Coerper, Sullivan, Green

NOES: I

Hardy, Bohr, Cook

ABSENT: None

Adjournment - City Council/Redevelopment Agency

Mayor Hardy adjourned the regular meetings of the City Council/Redevelopment Agency of the City of Huntington Beach at 8:55 p.m. to Monday, August 1, 2005, at 4:00 p.m., in Room B-8 Civic Center, 2000 Main Street Huntington Beach, California.

	City Clerk and ex-officio Clerk of the City Council of the City of Huntington Beach and Clerk of the Redevelopment Agency of the City of Huntington Beach, California
ATTEST:	
City Clerk-Clerk	Mayor-Chair